

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

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): November 3, 2021

AFC GAMMA, INC.
(Exact Name of Registrant as Specified in Its Charter)

Maryland
(State or Other Jurisdiction
of Incorporation)

001-39995
(Commission
File Number)

85-1807125
(IRS Employer
Identification No.)

**525 Okeechobee Blvd., Suite 1770
West Palm Beach, FL, 33401**
(Address of principal executive offices, including zip code)

561-510-2390
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instructions A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.01 par value per share	AFCG	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

Amendment and Restatement of Credit Agreement

On November 3, 2021, AFC Gamma, Inc. (the “Company”) entered into the Second Amendment to the Revolving Credit Agreement (the “Second Amendment”), by and between the Company, as borrower, and AFC Finance, LLC, as agent and lender, to amend its revolving credit agreement with AFC Finance, LLC (as amended, restated, supplemented or otherwise modified from time to time, the “Revolving Credit Agreement”) to, among other things: (i) decrease the interest rate to 4.75% per annum; (ii) extend the maturity date to the earlier of September 30, 2022 and the closing date of any credit facility where the proceeds are incurred to refund, refinance or replace such revolving credit agreement; (iii) add an unused fee of 0.25% per annum on the undrawn amount of the revolving loan commitments; (iv) add a one-time commitment fee of 0.25% of the total revolving loan commitments, payable in three quarterly installments, beginning in the first quarter of 2022; (v) increase the aggregate revolving credit commitments to \$75.0 million; (vi) provide holders of Notes (as defined below), on the occurrence of certain events of default and subject to certain terms and conditions, the option to purchase all outstanding obligations under the Revolving Credit Agreement; and (vii) require all payments of interest, the commitment fee and unused fee (in each case, net of taxes) to be paid, directly or indirectly, to a charitable organization to be designated by AFC Finance, LLC in its sole discretion. AFC Finance, LLC is an affiliated entity wholly-owned by Leonard M. Tannenbaum, the Company’s Chief Executive Officer and one of the Company’s directors, and Jonathan Kalikow, the Company’s Head of Real Estate and one of the Company’s directors.

The foregoing description of the Second Amendment is qualified in its entirety by reference to the terms of the Second Amendment, the form of which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

Indenture relating to the Issuance of 5.750% Senior Notes due 2027

On November 3, 2021, the Company completed its previously announced offering of \$100.0 million aggregate principal amount of its 5.750% Senior Notes due 2027 (the “Notes”) in a private offering (the “Notes Offering”) to qualified institutional buyers pursuant to Rule 144A and non-U.S. persons pursuant to Regulation S under the Securities Act of 1933, as amended (the “Securities Act”). The Notes were issued pursuant to an Indenture, dated as of November 3, 2021 (the “Indenture”), between the Company and TMI Trust Company, as trustee. Seaport Global Securities LLC acted as sole book-running manager and Lake Street Capital Markets, LLC acted as co-manager for the Notes Offering.

The Indenture provides that the Notes will bear interest at a rate of 5.750% per annum, payable in cash semi-annually on May 1 and November 1 of each year, beginning May 1, 2022. The Notes will mature on May 1, 2027. Under the Indenture, the Company is required to cause all of its existing and future subsidiaries to fully and unconditionally guarantee the Notes on a senior unsecured basis, other than certain immaterial subsidiaries as set forth in the Indenture. As of the issue date of the Notes, the Company’s only subsidiary, AFCG TRS1, LLC, constitutes an immaterial subsidiary under the Indenture and, consequently, the Notes are not currently guaranteed by any of the Company’s subsidiaries.

Prior to February 1, 2027, the Company may redeem the Notes at any time, in whole or from time to time in part, at a redemption price equal to the greater of 100% of the principal amount thereof or a make-whole premium set forth in the Indenture, plus accrued and unpaid interest, if any, to, but excluding, the redemption date.

The Company may redeem some or all of the Notes on or after February 1, 2027 at a redemption price equal to 100% of the principal amount of such Notes being redeemed, plus accrued and unpaid interest thereon, if any, to, but excluding, the applicable redemption date. The Notes are the general unsecured and unsubordinated obligations of the Company. Any Note guarantees will be the unsecured and unsubordinated obligations of the guarantors. Under certain circumstances, the guarantors may be released and discharged from their Note guarantees without consent of the holders of Notes. The Notes rank (i) equally in right of payment with all of Company’s and the subsidiary guarantors’ existing and future senior unsecured indebtedness; (ii) senior in right of payment to any of the Company’s and the subsidiary guarantors’ future indebtedness that is expressly subordinated in right of payment to the Notes; and (iii) are effectively subordinated to the Company’s and the subsidiary guarantors’ existing and future secured indebtedness, including secured indebtedness under the Revolving Credit Agreement, to the extent of the value of the assets securing such indebtedness. The Notes are structurally subordinated to all existing and future indebtedness and liabilities (including trade payables) of the Company’s subsidiaries that do not guarantee the Notes.

Upon the occurrence of a Change of Control Triggering Event (as defined in the Indenture), unless the Company or a third party has previously or concurrently delivered a redemption notice with respect to all of the outstanding Notes, the Company will be required to offer to repurchase the Notes at a price equal to 101% of the principal amount of the Notes, plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase.

The Indenture contains covenants that, subject to exceptions and qualifications, among other things, limit the ability of the Company and the Company's subsidiaries to (i) incur additional indebtedness; and (ii) consummate a merger, consolidation or sale of all or substantially all of the assets of the Company and its subsidiaries taken as a whole.

The Indenture contains customary events of default including, without limitation, failure to make required payments, failure to comply with certain agreements or covenants, cross-default and cross-acceleration to certain other indebtedness in excess of specified amounts and certain events of bankruptcy and insolvency. An event of default under the Indenture will allow either the trustee or the holders of at least 25% in aggregate principal amount of the then outstanding Notes to accelerate, or in certain cases, will automatically cause the acceleration of, the maturity of the principal, and accrued and unpaid interest, if any, on all outstanding Notes.

The foregoing description of the Indenture is qualified in its entirety by reference to the terms of the Indenture, which is attached hereto as Exhibit 4.1 and incorporated herein by reference. The foregoing description of the Notes is qualified in its entirety by reference to the terms of the Notes, the form of which is attached hereto as Exhibit 4.2 and incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth in Item 1.01 hereto is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

Exhibit No.	Description
4.1	Indenture, dated as of November 3, 2021, between the Company and TMI Trust Company, as trustee.
4.2	Form of 5.750% Senior Notes due 2027 (included in Exhibit 4.1).
10.1	Second Amendment to Revolving Credit Agreement, dated as of November 3, 2021, by and among AFC Gamma, Inc., as borrower, AFC Finance, LLC, as agent, and AFC Finance, LLC, as lender.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: November 3, 2021

AFC GAMMA, INC.

By: /s/ Brett Kaufman
Brett Kaufman
Chief Financial Officer

AFC GAMMA, INC., AS ISSUER
TMI TRUST COMPANY, AS TRUSTEE

INDENTURE

Dated as of November 3, 2021

5.750% SENIOR NOTES DUE 2027

TABLE OF CONTENTS

<u>Section</u>		<u>Page</u>
ARTICLE 1 DEFINITIONS		1
Section 1.01	Definitions	1
ARTICLE 2 ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES		10
Section 2.01	Designation Amount and Issue of Notes	10
Section 2.02	Form of Notes	11
Section 2.03	Date and Denomination of Notes; Payments of Interest	11
Section 2.04	Execution of Notes	12
Section 2.05	Note Registrar and Paying Agent	13
Section 2.06	Exchange and Registration of Transfer of Notes; Restrictions on Transfer	13
Section 2.07	Mutilated, Destroyed, Lost or Stolen Notes	23
Section 2.08	Temporary Notes	24
Section 2.09	Cancellation of Notes	24
Section 2.10	CUSIP Numbers	24
Section 2.11	Issuance of Additional Notes	24
Section 2.12	Debt Rating Effect on Interest Rate	25
ARTICLE 3 REDEMPTION AND REPURCHASE OF NOTES		25
Section 3.01	Optional Redemption of Notes	25
Section 3.02	Notice of Optional Redemption; Selection of Notes	26
Section 3.03	Payment of Notes Called for Redemption by the Issuer	27
Section 3.04	Sinking Fund	27
Section 3.05	Change of Control Triggering Event	27
Section 3.06	Repurchase	28
ARTICLE 4 CERTAIN COVENANTS OF THE ISSUER		28
Section 4.01	Payment of Principal, Premium and Interest	28
Section 4.02	Maintenance of Office or Agency	28
Section 4.03	Appointments to Fill Vacancies in Trustee's Office	29
Section 4.04	Provisions as to Paying Agent	29
Section 4.05	Existence	29
Section 4.06	Reports	30
Section 4.07	Stay, Extension and Usury Laws	30
Section 4.08	Compliance Certificate	30
Section 4.09	Limitations on Incurrence of Debt	31
Section 4.10	Insurance	32
Section 4.11	Additional Interest Notice	32
ARTICLE 5 NOTEHOLDERS' LISTS AND REPORTS BY THE ISSUER AND THE TRUSTEE		32
Section 5.01	Noteholders' Lists	32
Section 5.02	Preservation and Disclosure of Lists	32
Section 5.03	[Reserved]	32
ARTICLE 6 REMEDIES OF THE TRUSTEE AND NOTEHOLDERS ON AN EVENT OF DEFAULT		32
Section 6.01	Events of Default	32
Section 6.02	Payments of Notes on Default; Suit Therefor	34
Section 6.03	Application of Monies Collected by Trustee	35
Section 6.04	Proceedings by Noteholders	36
Section 6.05	Proceedings by Trustee	36
Section 6.06	Remedies Cumulative and Continuing	36
Section 6.07	Direction of Proceedings and Waiver of Defaults by Majority of Noteholders	37
Section 6.08	Notice of Defaults	37

Section 6.09	Undertaking to Pay Costs	37
ARTICLE 7 THE TRUSTEE		38
Section 7.01	Duties and Responsibilities of Trustee	38
Section 7.02	Reliance on Documents, Opinions, etc	39
Section 7.03	No Responsibility for Recitals, etc	40
Section 7.04	Trustee, Paying Agents or Registrar May Own Notes	40
Section 7.05	Monies to Be Held in Trust	40
Section 7.06	Compensation and Expenses of Trustee	41
Section 7.07	Officers' Certificate as Evidence	41
Section 7.08	Conflicting Interest of Trustee	41
Section 7.09	Eligibility of Trustee	41
Section 7.10	Resignation or Removal of Trustee	41
Section 7.11	Acceptance by Successor Trustee	42
Section 7.12	Succession by Merger	43
ARTICLE 8 THE NOTEHOLDERS		43
Section 8.01	Action by Noteholders	43
Section 8.02	Proof of Execution by Noteholders	43
Section 8.03	Absolute Owners	43
Section 8.04	Issuer-owned Notes Disregarded	44
Section 8.05	Revocation of Consents; Future Holders Bound	44
ARTICLE 9 SUPPLEMENTAL INDENTURES		44
Section 9.01	Supplemental Indentures Without Consent of Noteholders	44
Section 9.02	Supplemental Indenture With Consent of Noteholders	45
Section 9.03	Effect of Supplemental Indenture	46
Section 9.04	Notation on Notes	46
Section 9.05	Evidence of Compliance of Supplemental Indenture to Be Furnished to Trustee	46
ARTICLE 10 CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE		47
Section 10.01	Issuer May Consolidate on Certain Terms	47
Section 10.02	Issuer Successor to Be Substituted	47
ARTICLE 11 SATISFACTION AND DISCHARGE OF INDENTURE		47
Section 11.01	Discharge of Indenture	47
Section 11.02	Deposited Monies to Be Held in Trust by Trustee	48
Section 11.03	Paying Agent to Repay Monies Held	48
Section 11.04	Return of Unclaimed Monies	48
Section 11.05	Reinstatement	48
ARTICLE 12 LEGAL DEFEASANCE AND COVENANT DEFEASANCE		48
Section 12.01	Option to Effect Legal Defeasance or Covenant Defeasance	48
Section 12.02	Legal Defeasance and Discharge	49
Section 12.03	Covenant Defeasance	49
Section 12.04	Conditions to Legal or Covenant Defeasance	49
Section 12.05	Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions	50
Section 12.06	Repayment to Issuer	51
Section 12.07	Reinstatement	51
ARTICLE 13 IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS		51
Section 13.01	Indenture and Notes Solely Corporate Obligations	51
ARTICLE 14 MEETINGS OF HOLDERS OF NOTES		51
Section 14.01	Purposes for Which Meetings May Be Called	51

Section 14.02	Call, Notice and Place of Meetings	52
Section 14.03	Persons Entitled to Vote at Meetings	52
Section 14.04	Quorum; Action	52
Section 14.05	Determination of Voting Rights; Conduct and Adjournment of Meetings	52
Section 14.06	Counting Votes and Recording Action of Meetings	53
ARTICLE 15 GUARANTEE		53
Section 15.01	Guarantee	53
Section 15.02	Execution and Delivery of Guarantee	54
Section 15.03	Limitation of Guarantors' Liability; Certain Bankruptcy Events	54
Section 15.04	Additional Guarantors; Release of Guarantors and Guarantee Obligations	55
ARTICLE 16 MISCELLANEOUS PROVISIONS		55
Section 16.01	Provisions Binding on Issuer's and Guarantors' Successors	55
Section 16.02	Official Acts by Successor Corporation	55
Section 16.03	Addresses for Notices, etc	55
Section 16.04	Governing Law; Jury Trial Waiver; Consent to Jurisdiction	56
Section 16.05	Evidence of Compliance with Conditions Precedent, Certificates to Trustee	57
Section 16.06	Legal Holidays	57
Section 16.07	No Incorporation by Reference to Trust Indenture Act	58
Section 16.08	No Security Interest Created	58
Section 16.09	Benefits of Indenture	58
Section 16.10	Table of Contents, Headings, etc	58
Section 16.11	Authenticating Agent	58
Section 16.12	Execution in Counterparts	58
Section 16.13	Severability	59
Section 16.14	USA PATRIOT Act	59

INDENTURE

INDENTURE, dated as of November 3, 2021, among AFC Gamma, Inc., a Maryland corporation (the “**Issuer**”), each Guarantor (as defined below) from time to time party hereto and TMI Trust Company, as trustee hereunder (hereinafter called the “**Trustee**”).

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the holders of the Issuer’s 5.750% Senior Notes due 2027 (the “**Notes**”) guaranteed by the Guarantors (if any).

ARTICLE 1 DEFINITIONS

Section 1.01 Definitions. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms used in this Indenture which are by reference therein defined in the Securities Act (as defined below) (except as herein otherwise expressly provided or unless the context otherwise requires) shall have the respective meanings assigned to such terms in the Securities Act as in force at the date of the execution of this Indenture. The words “herein,” “hereof,” “hereunder” and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other Subdivision. The terms defined in this Article include the plural as well as the singular.

“**Acceptable Purchase Option Agreement**” means a purchase option agreement on terms that are no less favorable to the Holders than the Revolving Credit Facility Purchase Option (in the good faith determination of the Issuer); provided that such purchase option agreement may be evidenced in the definitive document for such Debt so long as the Holders are third-party beneficiaries thereof and the language providing such purchase option cannot be amended without the consent of the Holders holding a majority of the outstanding principal amount of the Notes.

“**Acquired Debt**” means Debt of a Person (1) existing at the time such Person becomes a Subsidiary or (2) assumed in connection with the acquisition of assets from such Person, in each case, other than Debt incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or such acquisition. Acquired Debt shall be deemed to be incurred on the date of the related acquisition of assets from any Person or the date the acquired Person becomes a Subsidiary.

“**Additional Interest**” means Debt Rating Additional Interest and/or Reporting Failure Additional Interest, as the case may be.

“**Additional Interest Notice**” has the meaning specified in Section 4.11 hereof.

“**Additional Notes**” means additional Notes (other than the Initial Notes) issued under this Indenture in accordance with Section 2.04, Section 2.11 and Section 4.09 hereof, as part of the same series as the Initial Notes.

“**Adjusted Treasury Rate**” means, on any Redemption Date, the rate per year, as determined by the Quotation Agent, equal to:

(1) the yield, under the heading that represents the weekly average yield (being, if not reported as a weekly average yield, the average of the five most recent daily reported yields), appearing in the most recently published statistical release designated “H.15” or any successor publication that is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption “Treasury Constant Maturities,” for the maturity corresponding to the Comparable Treasury Issue; provided that if no maturity is within three months before or after the Remaining Life of the Notes to be redeemed, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue will be determined and the Adjusted Treasury Rate will be interpolated or extrapolated from those yields on a straight-line basis rounding to the nearest month; or

(2) if that release, or any successor release, is not published during the week preceding the calculation date or does not contain such yields, the rate per year equal to the semiannual equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for that Redemption Date.

The Adjusted Treasury Rate will be calculated at 5:00 p.m. (New York City time) on the third Business Day preceding the date of the notice of redemption by the Quotation Agent.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control,” when used with respect to any specified Person means the power to direct or cause the direction of 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.

“**Agent**” means any authenticating agent, transfer agent, Note Registrar, co-registrar, Paying Agent or additional paying agent.

“**Annual Debt Service Charge**” as of any date means the amount of interest expense, to the extent payable in cash, determined on a consolidated basis in accordance with generally accepted accounting principles.

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

“**Authentication Order**” has the meaning specified in Section 2.01 hereof.

“**Bankruptcy Law**” means Title 11, U.S. Code or any similar federal, state, or foreign law for the relief of debtors.

“**Benefited Party**” has the meaning specified in Section 15.01 hereof.

“**Board of Directors**” means the board of directors of the Issuer or a committee of such board duly authorized to act for it hereunder.

“**Business Day**” means, with respect to any Note, any day, other than a Saturday, Sunday or any other day on which banking institutions or trust companies are authorized or obligated by law or executive order to close in New York, New York, or where the Corporate Trust Office of the Trustee is located.

“**Change of Control**” means the occurrence of one or more of the following events:

(1) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Issuer and the Issuer’s Subsidiaries, taken as a whole, to any Person or group of related Persons for purposes of Section 13(d) of the Exchange Act (a “**Group**”), together with any Affiliates thereof (whether or not otherwise in compliance with the provisions of this Indenture), other than to any Subsidiaries of the Issuer;

(2) the approval by the holders of capital stock of the Issuer of any plan or proposal for the liquidation or dissolution of the Issuer (whether or not otherwise in compliance with the provisions of this Indenture); or

(3) any Person or Group shall become the owner, directly or indirectly, beneficially or of record, of shares representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the Issuer, other than in connection with a transaction or series of related transactions effected to form a holding company of the Issuer, if the stockholders of such holding company immediately after such transaction or series of related transactions are substantially the same as the stockholders of the Issuer immediately prior to such transaction or series of related transactions;

provided that, in each case and for the avoidance of doubt, the occurrence of an Internalization Transaction shall not be deemed a Change of Control.

“**Change of Control Offer**” has the meaning specified in [Section 3.05](#) hereof.

“**Change of Control Payment Date**” has the meaning specified in [Section 3.05](#) hereof.

“**Change of Control Triggering Event**” means, in each case, the occurrence of both (1) a Change of Control and (2) a Rating Event.

“**Clearstream**” means Clearstream Banking S.A.

“**Commencement Date**” means the date that is 30 days following the occurrence of a Revolving Credit Facility Event of Default and on which such Revolving Credit Facility Event of Default remains uncured.

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

“**Comparable Treasury Issue**” means the U.S. Treasury security selected by the Quotation Agent as having an actual or interpolated maturity comparable to the Remaining Life that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the Remaining Life.

“**Comparable Treasury Price**” means, with respect to any Redemption Date, (1) the average of the Reference Treasury Dealer Quotations for such Redemption Date, after excluding the highest and lowest of such Reference Treasury Dealer Quotations, or (2) if the Trustee obtains fewer than four such Reference Treasury Dealer Quotations, the average of all such Reference Treasury Dealer Quotations.

“**Consolidated Income Available for Debt Service**” means, for any period, Earnings from Operations of the Issuer and the Issuer’s Subsidiaries plus amounts which have been deducted, and minus amounts which have been added, for the following (without duplication): (1) Annual Debt Service Charge of the Issuer and the Issuer’s Subsidiaries, (2) provision for taxes of the Issuer and the Issuer’s Subsidiaries based on income, (3) provisions for gains and losses on properties (excluding, for the avoidance of doubt, realized gains and losses on loans and other extensions of credit to the Issuer’s borrowers) and depreciation, amortization and other non-cash items deducted in the calculation of Earnings from Operations, including, without limitation, stock-based compensation expense, (4) increases in deferred taxes and other non-cash items (other than, for the avoidance of doubt, the accrual of revenue in accordance with generally accepted accounting principles in the United States), (5) depreciation and amortization with respect to interests in joint venture and partially owned entity investments, (6) the effect of any charge resulting from a change in accounting principles in determining Earnings from Operations for such period, (7) amortization of deferred charges, (8) unusual and/or non-recurring items deducted in the calculation of Earnings from Operations, (9) the amount of fees, costs and expenses incurred in connection with any acquisition, any disposition, any investment, any incurrence, issuance, repayment, amendment or modification of Debt (including make-whole amounts, prepayment premiums and similar amounts) or any issuance, redemption or other retirement of equity interests during such period and (10) the amount of (a) any restructuring, impairment and/or settlement charges and expenses, (b) any casualty or condemnation event and (c) any losses, charges and expenses in respect of discontinued operations.

“**Corporate Trust Office**” or other similar term, means the designated office of the Trustee at which, at any particular time, its corporate trust business as it relates to this Indenture shall be administered, which office is, at the date as of which this Indenture is dated, located at the address set forth in [Section 16.03](#) hereof.

“**Covenant Defeasance**” has the meaning specified in [Section 12.03](#) hereof.

“**Credit Facilities**” means one or more debt facilities with banks (or other institutional lenders that provide revolving credit loans in the ordinary course of business) providing for revolving credit loans, term loans, letters of credit or other long-term indebtedness (including, without limitation, the Revolving Credit Facility), including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, in each case, as amended, restated, modified, extended, renewed, refunded, replaced in any manner (whether upon termination or otherwise) or refinanced in whole or in part from time to time.

“**CUSIP**” means the Committee on Uniform Securities Identification Procedures.

“**Custodian**” means TMI Trust Company, as custodian with respect to the Notes in global form, or any successor entity thereto.

“**Debt**” means any of the Issuer’s or any of the Issuer’s Subsidiaries’ indebtedness in respect of (without duplication) (1) borrowed money evidenced by bonds, notes, debentures or similar instruments, (2) indebtedness secured by any mortgage, pledge, lien, charge, encumbrance or any security interest existing on property owned by the Issuer or any of the Issuer’s Subsidiaries, but only to the extent of the lesser of (a) the amount of indebtedness so secured and (b) the fair market value (determined in good faith by such Person) of the property subject to such mortgage, pledge, lien, charge, encumbrance or security interest, (3) non-contingent reimbursement obligations in connection with any letters of credit actually issued or amounts representing the balance deferred and unpaid of the purchase price of any property or services, excluding (i) trade and similar accounts payable and accrued expenses, in each case arising in the ordinary course of business, (ii) accrued pension cost, employee compensation and benefits and postretirement health care obligations arising in the ordinary course of business, and (iii) obligations in respect of customer advances, or (4) any lease of property by the Issuer or any of the Issuer’s Subsidiaries as lessee which is reflected on the Issuer’s consolidated balance sheet as a financing lease in accordance with generally accepted accounting principles in the United States (and that, for the avoidance of doubt, would have constituted a financing or capital lease in conformity with generally accepted accounting principles as applicable immediately prior to giving effect to FASB Accounting Standards Update (ASU) No. 2016-02, *Leases (Topic 842)* (February 2016)); but only to the extent that any such items (other than letters of credit) would appear as a liability on the Issuer’s consolidated balance sheet in accordance with generally accepted accounting principles in the United States. The term “Debt” also includes, to the extent not otherwise included, any obligation of the Issuer or any of the Issuer’s Subsidiaries to be liable for, or to pay, as obligor, guarantor or otherwise (other than for purposes of collection in the ordinary course of business or for the purposes of guaranteeing the payment of all amounts due and owing pursuant to leases to which the Issuer or any of the Issuer’s Subsidiaries are a party and have assigned its or their interest, provided that such assignee of the Issuer or the Issuer’s Subsidiary is not in default of any amounts due and owing under such leases), Debt of another Person (other than the Issuer or any of the Issuer’s Subsidiaries) (it being understood that Debt shall be deemed to be incurred by the Issuer or any of the Issuer’s Subsidiaries whenever the Issuer or such Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof). Notwithstanding the foregoing, Debt shall not include (i) earnouts, purchase price adjustments and holdbacks in connection with acquisitions; (ii) legally defeased, discharged and/or redeemed indebtedness; or (iii) interest, fees, make-whole amounts, premium, charges or expenses, if any, relating to the principal amount of indebtedness.

“**Debt Rating**” has the meaning specified in Section 2.12 hereof.

“**Debt Rating Additional Interest**” has the meaning specified in Section 2.12 hereof.

“**Default**” means any event which, after notice or the lapse of time, or both, would become, an Event of Default.

“**Defaulted Interest**” has the meaning specified in Section 2.03 hereof.

“**Definitive Note**” means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 hereof, substantially in the form of Exhibit A hereto except that such Note shall not bear the Global Note Legend and shall not have the “Schedule of Exchanges of Interests in the Global Note” attached thereto.

“**Depository**” means the clearing agency registered under the Exchange Act that is designated to act as the Depository for the Global Notes. DTC shall be the initial Depository, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, “Depository” shall mean or include such successor.

“**DTC**” means The Depository Trust Company.

“**Earnings from Operations**” means, for any period, net income or loss of the Issuer and the Issuer’s Subsidiaries, excluding (1) provisions for gains and losses on sales of investments or joint ventures (excluding, for the avoidance of doubt, realized gains and losses on loans and other extensions of credit to the Issuer’s borrowers); (2) provisions for gains and losses on disposition of discontinued operations; (3) non-recurring and/or unusual items deducted in the calculation of net income or loss; and (4) impairment charges, property valuation losses and non-cash charges necessary to record interest rate contracts at fair value; plus amounts received as rent under leases which are accounted for as financing arrangements net of related interest income, as reflected in the consolidated financial statements of the Issuer and the Issuer’s Subsidiaries for such period determined in accordance with generally accepted accounting principles in the United States.

“**EDGAR**” has the meaning specified in Section 4.06(a) hereof.

“**Egan Jones**” means Egan-Jones Ratings Company, or any successor to the rating agency business thereof.

“**Euroclear**” means Euroclear Bank SA/NV, as operator of the Euroclear system.

“**Event of Default**” means any event specified in Section 6.01 hereof as an Event of Default.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

“**Fitch**” means Fitch Ratings Inc., or any successor to the rating agency business thereof.

“**Global Note Legend**” means the legend set forth in Section 2.06(g)(2) hereof, which is required to be placed on all Global Notes issued under this Indenture.

“**Global Notes**” means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes deposited with or on behalf of and registered in the name of the Depository or its nominee, substantially in the form of Exhibit A hereto and that bears the Global Note Legend and that has the “Schedule of Exchanges of Interests in the Global Note” attached thereto, issued in accordance with this Indenture.

“**Government Securities**” means direct obligations of, or obligations guaranteed by, the United States of America, and the payment for which the United States pledges its full faith and credit.

“**Guarantee**” means the full and unconditional guarantee provided by each Guarantor in respect of the Notes as made applicable to the Notes in accordance with the provisions of Section 15.01 hereof, including as the result of execution and delivery of a Guarantee substantially in the form of Exhibit D hereto pursuant to the provisions of this Indenture.

“**Guarantee Obligations**” has the meaning specified in Section 15.01 hereof.

“**Guarantors**” means each Subsidiary (as defined below) of the Issuer, other than Immaterial Subsidiaries (as defined below) for so long as they constitute Immaterial Subsidiaries, that from time to time executes and delivers a Guarantee and, subject to the provisions of Article 10 hereof, shall include each such Guarantor’s successors and assigns.

“**Immaterial Subsidiary**” means, as of any date, any Subsidiary of the Issuer whose Total Assets, as of that date, are less than 3% of the Issuer’s and all of the Issuer’s Subsidiaries’ Total Assets on a consolidated basis; provided, that Total Assets of all Immaterial Subsidiaries, as of that date, may not exceed 6% of the Issuer and all of the Issuer’s Subsidiaries’ Total Assets on a consolidated basis.

“**Indenture**” means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

“**Indirect Participant**” means a Person who holds a beneficial interest in a Global Note through a Participant.

“**Initial Notes**” means the first \$100,000,000 aggregate principal amount of Notes issued under this Indenture on the date hereof.

“**Initial Purchasers**” means each of Seaport Global Securities LLC and Lake Street Capital Markets, LLC.

“**Interest**” means, when used with reference to the Notes, any interest payable under the terms of the Notes, including Additional Interest, if any, payable under the terms hereof.

“**Interest Payment Date**” means, with respect to the payment of interest on the Notes, each May 1 and November 1 of each year, beginning on May 1, 2022.

“**Internalization Transaction**” means a transaction in which the Manager contributes to the Issuer all of the assets of the Manager, including, without limitation, all furniture, fixtures, leasehold improvements, contract rights, computer software, employment and customer relationships or contracts, as applicable, goodwill, going concern value, other identifiable intangible assets and other business assets then owned by the Manager, or, in the alternative, the equity owners of the Manager contribute to the Issuer 100% of the outstanding equity interests in the Manager.

“**Investment Grade Rating**” means a rating equal to or greater than BBB- by Egan Jones, S&P and Fitch and Baa3 by Moody’s or, in each case, the equivalent thereof under any new ratings system if the ratings system of any such agency shall be modified after the date hereof, or the equivalent rating of any other Rating Agency selected by the Issuer as provided in the definition of “Rating Agency.”

“**Issuer**” means the limited partnership named as the “Issuer” in the first paragraph of this Indenture, and, subject to the provisions of [Article 10](#) hereof, shall include its successors and assigns.

“**Legal Defeasance**” has the meaning specified in [Section 12.02](#) hereof.

“**Manager**” means AFC Management, LLC, a Delaware limited liability company.

“**Maturity Date**” means May 1, 2027.

“**Moody’s**” means Moody’s Investors Service, Inc., or any successor to the rating agency business thereof.

“**Non-U.S. Person**” means a Person who is not a U.S. Person.

“**Note**” or “**Notes**” means any Note or Notes, as the case may be, authenticated and delivered under this Indenture, including the Initial Notes, any Additional Notes and any Global Note.

“**Note Register**” has the meaning specified in [Section 2.05](#) hereof.

“**Note Registrar**” has the meaning specified in [Section 2.05](#) hereof.

“**Noteholder**” or “**Holder**” as applied to any Note, or other similar terms (but excluding the term “beneficial holder”), means any Person in whose name at the time a particular Note is registered on the Note Registrar’s books.

“**Offering Memorandum**” means the Issuer’s and the Guarantors’ offering memorandum dated October 28, 2021 relating to the initial offering of the Notes.

“**Officer**” means, with respect to any Person, any person holding any of the following positions with such Person, or, in the case of a Person that is a partnership, the general partner of such Person: the Chairman of the Board, the Chief Executive Officer, the President, any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”), the Chief Financial Officer, the Treasurer, the Secretary and the Head of Real Estate.

“**Officers’ Certificate**” means, with respect to any Person, a certificate to be delivered to the Trustee signed by any two Officers or by one such Officer and any Assistant Treasurer or Assistant Secretary of such Person or, in the case of a Person that is a partnership, the general partner of such Person and in accordance with the provisions of Section 16.05 and any other statements as may be required pursuant to the terms of this Indenture.

“**Opinion of Counsel**” means, with respect to any Person, an opinion in writing signed by legal counsel, who may be an employee of or counsel to such Person, or other counsel reasonably acceptable to the Trustee and in accordance with the provisions of Section 16.05 and any other statements as may be required pursuant to the terms of this Indenture.

“**outstanding**,” when used with reference to Notes and subject to the provisions of Section 8.04 hereof, means, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

- (1) Notes theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (2) Notes, or portions thereof, (i) for the redemption of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Issuer or any Guarantor) or (ii) which shall have been otherwise discharged in accordance with Article 11 hereof;
- (3) Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.07 hereof; and
- (4) Notes paid or redeemed pursuant to Article 3 hereof.

“**Par Call Date**” means February 1, 2027.

“**Participant**” means, with respect to the Depository, Euroclear or Clearstream, a Person who has an account with the Depository, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Euroclear and Clearstream).

“**Paying Agent**” has the meaning specified in Section 2.05 hereof.

“**Person**” means an individual, partnership, corporation, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof.

“**Predecessor Note**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note, and, for the purposes of this definition, any Note authenticated and delivered under Section 2.07 hereof in lieu of a lost, destroyed or stolen Note shall be deemed to evidence the same debt as the lost, destroyed or stolen Note that it replaces.

“**premium**” means any premium payable under the terms of the Notes.

“**Primary Treasury Dealer**” means a primary U.S. Government securities dealer.

“**Private Placement Legend**” means the legend set forth in Section 2.06(g)(1) hereof to be placed on all Notes issued under this Indenture except where otherwise permitted by the provisions of this Indenture.

“**QIB**” means any “qualified institutional buyer” (as defined in Rule 144A).

“**Quotation Agent**” means the Reference Treasury Dealer appointed by the Issuer.

“**Rating Agency**” means (1) each of Egan Jones, Fitch, Moody’s and S&P and (2) if Egan Jones, Fitch, Moody’s or S&P ceases to rate the Notes for reasons outside of the Issuer’s control, a “nationally recognized statistical rating organization” as such term is defined in Section 3(a)(62) of the Exchange Act selected by the Issuer as a replacement agency for Egan Jones, Fitch, Moody’s or S&P, as the case may be.

“**Rating Event**” means the Notes (A) are downgraded by at least one rating category from the applicable rating of such Notes on the first day of the Trigger Period, and such downgraded rating category for the Notes is below an Investment Grade Rating, by (i) one of the Rating Agencies (if the Notes are then only rated by one Rating Agency), (ii) at least two of the Rating Agencies (if the Notes are then rated by two Rating Agencies) or (iii) at least a majority of the Rating Agencies (if the Notes are then rated by more than two Rating Agencies); and/or (B) cease to be rated by all of the Rating Agencies, in each case, on any date during the Trigger Period; *provided* that a Rating Event will not be deemed to have occurred in respect of a particular Change of Control if each applicable downgrading Rating Agency does not publicly announce or confirm or inform the Trustee in writing at the Issuer’s request that the reduction was the result of the Change of Control (whether or not the applicable Change of Control has occurred at the time of the Change of Control Triggering Event). Notwithstanding the foregoing, no Rating Event will be deemed to have occurred in connection with any particular Change of Control unless and until such Change of Control has actually been consummated. The Trustee shall have no obligation to determine whether a Rating Event has occurred.

“**Record Date**” has the meaning specified in Section 2.03 hereof.

“**Redemption Date**” means, with respect to any Note or portion thereof to be redeemed in accordance with the provisions of Section 3.01 hereof, the date fixed for such redemption in accordance with the provisions of Section 3.01 hereof.

“**Redemption Price**” has the meaning provided in Section 3.01 hereof.

“**Reference Treasury Dealer**” means four Primary Treasury Dealers selected by the Issuer; *provided, however*, that if any of the Reference Treasury Dealers referred to above for the Notes ceases to be a Primary Treasury Dealer, the Issuer will substitute therefor another Primary Treasury Dealer.

“**Reference Treasury Dealer Quotations**” means, with respect to each Reference Treasury Dealer and any Redemption Date, the average, as determined by the Issuer, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding the date of the applicable notice of redemption.

“**Regulation S**” means Regulation S under the Securities Act or any successor regulation.

“**Regulation S Global Note**” means a Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depository or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Regulation S.

“**Remaining Life**” means the remaining term of the Notes to be redeemed, calculated as if the maturity date of such Notes were the Par Call Date.

“**Reporting Failure Additional Interest**” means additional interest accruing pursuant to Section 6.01 of this Indenture as the sole remedy for any violation of any obligations the Issuer may be deemed to have for the Issuer’s breach of Section 4.06 hereof.

“**Responsible Officer**” shall mean, when used with respect to the Trustee, any trust officer assigned to the Corporate Trust Office of the Trustee customarily performing functions similar to those performed by persons having direct responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such person’s knowledge of or familiarity with the particular subject.

“**Restricted Definitive Note**” means a Definitive Note bearing the Private Placement Legend.

“**Restricted Global Note**” means a Global Note bearing the Private Placement Legend.

“**Restricted Period**” means the 40-day distribution compliance period as defined in Regulation S.

“**Revolving Credit Facility**” means that credit facility made available to the Issuer, as borrower, pursuant to that certain Secured Revolving Credit Agreement, dated as of August 18, 2020 (as amended by that certain Amendment to Revolving Credit Agreement, dated as of May 7, 2021, and that certain Second Amendment to Revolving Credit Agreement, dated as of November 3, 2021, and as may be further amended, supplemented, amended and restated or otherwise modified from time to time), by and among the Issuer, as borrower, the lenders from time to time party hereto, and AFC Finance, LLC, as agent.

“**Revolving Credit Facility Event of Default**” means an event of default arising from (A) the Issuer’s failure to pay any principal, interest or premiums due or (B) certain events of bankruptcy, insolvency or reorganization, or court appointment of a receiver, liquidator or trustee of the Issuer or any substantial part of the Issuer’s property, in each case, under the Revolving Credit Facility.

“**Revolving Credit Facility Purchase Option**” means that certain purchase option granted to the Holders as of the Commencement Date as third-party beneficiaries of the Revolving Credit Facility, providing that upon the Commencement Date, the Holders shall have the ability to purchase all outstanding obligations in respect of such Debt at par plus any accrued and unpaid interest and/or premiums, if any, for a period of not less than 30 days following the passage of such 30-day period, but only to the extent that such Revolving Credit Facility Event of Default is continuing at such time and subject to the terms and conditions specified in the agreement governing the Revolving Credit Facility; provided that, for the avoidance of doubt, a Holder may only exercise its Revolving Credit Facility Purchase Option to the extent such Holder continues to hold Notes as of the date its election notice is delivered to the Issuer; provided further that such Revolving Credit Facility Purchase Option cannot be amended without the consent of the Holders holding a majority of the outstanding principal amount of the Notes.

“**Rule 144**” means Rule 144 under the Securities Act (or any successor rule), as it may be amended from time to time hereafter.

“**Rule 144A**” means Rule 144A under the Securities Act (or any successor rule), as it may be amended from time to time hereafter.

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

“**Rule 903**” means Rule 903 promulgated under the Securities Act as it may be amended from time to time hereafter.

“**Rule 904**” means Rule 904 promulgated under the Securities Act as it may be amended from time to time hereafter.

“**S&P**” means Standard & Poor’s Ratings Group, Inc., or any successor to the rating agency business thereof.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

“**Significant Subsidiary**” means any subsidiary which is a “significant subsidiary” within the meaning of Rule 1-02(w) of Regulation S-X promulgated by the Commission as in effect on the date hereof.

“**Stated Maturity**,” with respect to any Note or any installment of principal thereof or interest thereon, means the date established by or pursuant to this Indenture or such Note as the fixed date on which the principal of such Note or such installment of principal or interest is due and payable.

“**Subsidiary**” means, with respect to any Person, (i) any corporation, association or other business entity of which more than 50% of the total voting power of shares of capital stock or other equity interest entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other subsidiaries of that Person (or a combination thereof) and (ii) any partnership (a) the sole general partner or managing general partner of which is such Person or a subsidiary of such Person or (b) the only general partners of which are such Person or of one or more subsidiaries of such Person (or any combination thereof).

“**Total Assets**” as of any date means, with respect to any Person, all of such Person’s assets determined in accordance with generally accepted accounting principles in the United States (but excluding intangibles).

“**Trigger Period**” means the 60-day period commencing on the earlier of (1) the occurrence of a Change of Control or (2) the first public announcement of the occurrence of a Change of Control or the Issuer’s intention to effect a Change of Control (which Trigger Period will be extended so long as the ratings of the Notes are under publicly-announced consideration for possible downgrade by any of the Rating Agencies); *provided* that the Trigger Period will terminate with respect to each Rating Agency when such Rating Agency takes action (including affirming its existing ratings) with respect to such Change of Control.

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as it was in force at the date of this Indenture; provided, that if the Trust Indenture Act of 1939 is amended after the date hereof, the term “Trust Indenture Act” shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939 as so amended.

“**Trustee**” means TMI Trust Company, and its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at the time serving as successor trustee hereunder.

“**Unrestricted Definitive Note**” means a Definitive Note that does not bear and is not required to bear the Private Placement Legend.

“**Unrestricted Global Note**” means a Global Note that does not bear and is not required to bear the Private Placement Legend.

“**U.S. Person**” means a U.S. Person as defined in Rule 902(k) promulgated under the Securities Act.

ARTICLE 2 ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01 **Designation Amount and Issue of Notes.** The Notes shall be designated as the “5.750% Senior Notes due 2027.” Upon the execution of this Indenture, and from time to time thereafter, the Notes may be executed by the Issuer and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver the Notes upon a written order of the Issuer (an “Authentication Order”), such order signed on behalf of the Issuer by two Officers of the Issuer or by an Officer of the Issuer and either an Assistant Treasurer or any Assistant Secretary of the Issuer and an Opinion of Counsel as to, among other things, the enforceability of this Indenture and the Notes. At any time and from time to time thereafter, the Trustee shall, upon receipt of an Authentication Order, authenticate and deliver any Additional Notes in an aggregate principal amount specified in such Authentication Order for such Additional Notes issued hereunder and, in the case of any issuance of Additional Notes pursuant to Section 2.11, such Authentication Order shall certify that such issuance is in compliance with this Indenture. A Note will not be valid and obligatory for any purpose until authenticated by the manual signature of the Trustee.

The aggregate principal amount of Notes which may be authenticated and delivered under this Indenture is unlimited; provided, that upon initial issuance, the aggregate principal amount of Notes outstanding shall not exceed \$100,000,000, except as provided in [Section 2.07](#) and [Section 2.08](#) hereof. The Issuer may, without the consent of the Holders of Notes, issue Additional Notes from time to time in the future in an unlimited principal amount, subject to compliance with the terms of this Indenture, including [Section 2.11](#) hereof.

Section 2.02 Form of Notes. The Notes issued in global form will be substantially in the form of [Exhibit A](#) hereto (including the Global Note Legend thereon and the “Schedule of Exchanges of Interests in the Global Note” attached thereto). Notes issued in definitive form will be substantially in the form of [Exhibit A](#) hereto (but without the Global Note Legend thereon and without the “Schedule of Exchanges of Interests in the Global Note” attached thereto). Each Global Note will represent such of the outstanding Notes as will be specified therein and each shall provide that it represents the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby will be made by the Trustee or the Custodian, at the direction of the Trustee. The terms and provisions contained in the form of Note 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.

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, the Depositary or as may be required for the Notes to be tradeable on any market existing or 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.

So long as the Notes are eligible for book-entry settlement with the Depositary, or unless otherwise required by law, or otherwise contemplated by [Section 2.06\(a\)](#) hereof, all of the Notes will be represented by one or more Global Notes. The transfer and exchange of beneficial interests in any such Global Note shall be effected through the Depositary in accordance with this Indenture and the applicable procedures of the Depositary. Except as provided in [Section 2.06](#) hereof, 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.

Section 2.03 Date and Denomination of Notes; Payments of Interest. The Notes shall be issuable in registered form without coupons in denominations of \$2,000 principal amount and integral multiples of \$1,000 in excess 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 Note attached as [Exhibit A](#) hereto. Interest on the Notes shall be computed on the basis of a 360-day year consisting of twelve (12) 30-day months.

The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at 5:00 p.m., New York City time, on any Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. Interest shall be payable at the office of the Issuer maintained by the Issuer for such purposes, which shall initially be the Corporate Trust Office. The Issuer shall pay interest (i) on any Notes in certificated form by check mailed to the address of the Person entitled thereto as it appears in the Note Register; provided, however, that a Holder of any Notes in certificated form in the aggregate principal amount of more than \$2.0 million may specify by written notice to the Issuer that it pay interest by wire transfer of immediately available funds to the account specified by the Noteholder in such notice, or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee. If a payment date is not a Business Day, payment shall be made on the next succeeding Business Day, and no additional interest shall accrue thereon. The term “Record Date” with respect to any Interest Payment Date shall mean the April 15 or October 15 preceding the applicable May 1 or November 1 Interest Payment Date, respectively.

No other payment or adjustment will be made for accrued interest on an exchanged Note.

Any interest on any Note which is payable, but is not punctually paid or duly provided for, on any May 1 or November 1 (herein called “**Defaulted Interest**”) shall forthwith cease to be payable to the Noteholder registered as such on the relevant Record Date, and such Defaulted Interest shall be paid by the Issuer, at its election in each case, as provided in clause (1) or (2) below:

(1) The Issuer may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at 5:00 p.m., New York City time, on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuer shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment (which shall be not less than twenty-five (25) calendar days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Issuer shall deposit with the Trustee an amount of monies equal to the aggregate amount to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such monies when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall be not more than fifteen (15) calendar days and not less than ten (10) calendar days prior to the date of the proposed payment, and not less than ten (10) calendar days after the receipt by the Trustee of the notice of the proposed payment (unless the Trustee shall consent to an earlier date). The Trustee shall promptly notify the Issuer of such special record date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be delivered to each Holder at its physical or electronic mail address as it appears in the Note Register, not less than ten (10) calendar days prior to such special record date (unless the Trustee shall consent to an earlier date). Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been so delivered, such Defaulted Interest shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at 5:00 p.m., New York City time, on such special record date and shall no longer be payable pursuant to the following clause (2) of this Section 2.03.

(2) The Issuer may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Issuer to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04 Execution of Notes. The Notes shall be signed, in the name and on behalf of the Issuer, manually or by facsimile or other electronic imaging means by an Officer of the Issuer. The Trustee will, upon receipt of an Authentication Order, authenticate Notes for issue under this Indenture, including any Additional Notes. The aggregate principal amount of Notes outstanding at any time may not exceed the aggregate principal amount of Notes authorized for issuance by the Issuer pursuant to one or more Authentication Orders, except as provided in Section 2.07 and Section 2.08 hereof.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto, executed manually by the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 16.11 hereof), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Issuer shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Issuer who shall have signed any of the Notes shall cease to be such Officer of the Issuer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Issuer, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such Officer of the Issuer, and any Note may be signed on behalf of the Issuer by such persons as, at the actual date of the execution of such Note, shall be the proper Officers of the Issuer, although at the date of the execution of this Indenture any such person was not such an Officer of the Issuer.

Section 2.05 Note Registrar and Paying Agent. The Issuer will maintain an office or agency where Notes may be presented for registration of transfer or for exchange (“Note Registrar”) and an office or agency where Notes may be presented for payment (“Paying Agent”). The Note Registrar will keep a register of the Notes and of their transfer and exchange (the “Note Register”). The Issuer may appoint one or more co-registrars and one or more additional paying agents. The term “Note Registrar” includes any co-registrar and the term “Paying Agent” includes any additional paying agent. The Issuer may change any Paying Agent or Note Registrar without notice to any Holder. The Issuer will notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuer fails to appoint or maintain another entity as Note Registrar or Paying Agent, the Trustee shall act as such. The Issuer or any of the Issuer’s Subsidiaries may act as Paying Agent or Note Registrar.

The Issuer initially appoints DTC to act as Depositary with respect to the Global Notes.

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

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

Section 2.06 Exchange and Registration of Transfer of Notes; Restrictions on Transfer.

(a) **Transfer and Exchange of Global Notes.** A Global Note may not be transferred except as a whole 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. All Global Notes will be exchanged by the Issuer for Definitive Notes if:

- (1) 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 has ceased to be 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;
- (2) the Issuer in its sole discretion determines that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee; or
- (3) upon request from the Depositary if there has occurred and is continuing a Default or Event of Default with respect to the Notes.

Upon the occurrence of either of the preceding events in (1) or (2) above, Definitive Notes shall be issued in such names as the Depositary or Issuer shall instruct the Trustee. Global Notes also may be exchanged or replaced, in whole or in part, as provided in [Section 2.07](#) and [Section 2.08](#) hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this [Section 2.06](#), [Section 2.07](#) or [Section 2.08](#) hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note. A Global Note may not be exchanged for another Note, other than as provided in this [Section 2.06\(a\)](#); provided, however, beneficial interests in a Global Note may be transferred and exchanged as provided in [Section 2.06\(b\)](#) or [\(c\)](#) hereof.

(b) **Transfer and Exchange of Beneficial Interests in the Global Notes.** The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes will be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also will require compliance with either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) **Transfer of Beneficial Interests in the Same Global Note.** Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; provided, however, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Note Registrar to effect the transfers described in this Section 2.06(b)(1).

(2) **All Other Transfers and Exchanges of Beneficial Interests in Global Notes.** In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(1) above, the transferor of such beneficial interest must deliver to the Note Registrar either:

(A) both:

(i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(ii) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase; or

(B) both:

(i) 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

(ii) instructions given by the Depositary to the Note 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.

(3) **Transfer of Beneficial Interests to Another Restricted Global Note.** A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(b)(2) above and the Note Registrar receives the following:

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

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

(4) **Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note.** A beneficial interest in any Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.06(b)(2) above and:

(A) [reserved];

(B) [reserved];

(C) [reserved];

(D) the Note Registrar receives the following:

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

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

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

If any such transfer is effected pursuant to subparagraph (D) above at a time when an Unrestricted Global Note has not yet been issued, the Issuer shall issue and, upon receipt of an Authentication Order in accordance with Section 2.04 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (D) above.

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

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

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

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

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

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to the Issuer or any of the Issuer's Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

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

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) 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 in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Note 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. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c)(1) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(2) **Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes.** A holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only if:

(A) [reserved];

(B) [reserved];

(C) [reserved];

(D) the Note Registrar receives the following:

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

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

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

(3) **Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes.** If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon satisfaction of the conditions set forth in Section 2.06(b)(2) hereof, the Trustee will cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Issuer will execute and the Trustee will 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 2.06(c)(3) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Note Registrar from or through the Depository and the Participant or Indirect Participant. The Trustee will deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(3) will not bear the Private Placement Legend.

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

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

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

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

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

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

(E) if such Restricted Definitive Note is being transferred to the Issuer or any of the Issuer's Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

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

the Trustee will cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clauses (A), (D), (E) and (F) above, the appropriate Restricted Global Note, in the case of clause (B) above, the Rule 144A Global Note and, in the case of clause (C) above, the Regulation S Global Note.

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

(A) [reserved];

(B) [reserved];

(C) [reserved];

(D) the Note Registrar receives the following:

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

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

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

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.06(d)(2), the Trustee will cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

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

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraphs (2)(D) or (3) above at a time when an Unrestricted Global Note has not yet been issued, the Issuer will issue and, upon receipt of an Authentication Order in accordance with Section 2.04 hereof, the Trustee will authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

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

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

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

(B) if the transfer will be made pursuant to Rule 903 or Rule 904, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

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

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

(A) [reserved];

(B) [reserved];

(C) [reserved];

(D) the Note Registrar receives the following:

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

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

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

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

(f) [Reserved].

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

(1) **Private Placement Legend.**

(A) Except as permitted by subparagraph (B) below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

“THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE “RESALE RESTRICTION TERMINATION DATE”) THAT IS THE LATER OF (I)[*IN THE CASE OF RULE 144A NOTES: ONE YEAR AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF, THE ORIGINAL ISSUE DATE OF THE ISSUANCE OF ANY ADDITIONAL NOTES AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 OR ANY SUCCESSOR PROVISION THERETO*][*IN THE CASE OF REGULATION S NOTES: 40 DAYS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF, THE ORIGINAL ISSUE DATE OF THE ISSUANCE OF ANY ADDITIONAL NOTES AND THE DATE ON WHICH THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) WAS FIRST OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN RULE 902 OF REGULATION S) IN RELIANCE ON REGULATION S*] AND (II) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, ONLY (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”), TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER’S AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. [*IN THE CASE OF REGULATION S NOTES: BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT.*]”

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraphs (b)(4), (c)(2), (c)(3), (d)(2), (d)(3), (e)(2) or (e)(3) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) will not bear the Private Placement Legend.

(2) **Global Note Legend.** Each Global Note will 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 2.06 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.09 OF THE INDENTURE AND (4) 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 DEPOSITARY 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 (55 WATER STREET, NEW YORK, NEW YORK) (“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.”

(3) **Original Issue Discount Legend.** If any Notes are issued with “original issue discount” for U.S. federal income tax purposes, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) representing such Notes shall bear the legend in substantially the following form:

“THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR U.S. FEDERAL INCOME TAX PURPOSES. FOR FURTHER INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, THE ISSUE DATE AND THE YIELD TO MATURITY OF THIS NOTE, THE HOLDER OF THIS NOTE SHOULD CONTACT THE OFFICE OF THE DIRECTOR OF LEGAL OF AFC GAMMA, INC. AT 525 OKEECHOBEE BLVD., SUITE 1770, WEST PALM BEACH, FL 33401, WHO WILL PROMPTLY MAKE SUCH INFORMATION AVAILABLE.”

(4) **Other Legend.** Each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

“BY ITS ACQUISITION OF THIS SECURITY, THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (1) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE OR HOLD THIS SECURITY CONSTITUTES THE ASSETS OF (A) AN “EMPLOYEE BENEFIT PLAN” (AS DEFINED IN SECTION 3(3) OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”)) THAT IS SUBJECT TO TITLE I OF ERISA, (B) A “PLAN”, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”) OR SIMILAR PROVISIONS UNDER ANY OTHER U.S. OR NON-U.S. FEDERAL, STATE, LOCAL OR OTHER LAWS OR REGULATIONS (“SIMILAR LAWS”), OR (C) AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE “PLAN ASSETS” OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, OR (2) THE ACQUISITION, HOLDING AND DISPOSITION OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAWS.”

(h) **Cancellation and/or Adjustment of Global Notes.** At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed or canceled in whole and not in part, each such Global Note will be returned to or retained and canceled by the Trustee in accordance with [Section 2.09](#) hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note will be reduced accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(i) **General Provisions Relating to Transfers and Exchanges.**

(1) To permit registrations of transfers and exchanges, the Issuer will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.04 hereof or at the Note Registrar's request.

(2) No service charge will be made to a Holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the 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 Section 2.08, Section 3.03 and Section 9.04 hereof).

(3) The Note Registrar will not be required to register the transfer of or exchange of any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

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

(5) Neither the Trustee, Note Registrar nor the Issuer will be required:

(A) to issue or register the transfer or exchange of any Note during a period beginning at the opening of business fifteen (15) calendar days before the date on which notice of redemption of any Notes selected for redemption under Article 3 hereof is deemed to have been given and ending at the close of business on the date of such notice; or

(B) to register the transfer or exchange of any Note selected for redemption, in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(6) 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.

(7) The Trustee will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.04 hereof.

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

(9) The Trustee in each of its various capacities as designated from time to time hereunder shall have no responsibility or obligation to any Participants, indirect Participants or any other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Depository 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 Participants, Indirect Participants or other Person (other than the Depository) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Noteholders and all payments to be made to Noteholders under the Notes shall be given or made only to or upon the order of the registered Noteholders (which shall be the Depository or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depository subject to the customary procedures of the Depository. The Trustee in each of its various capacities as designated from time to time hereunder may rely and shall be fully protected in relying upon any information furnished by the Depository with respect to its Participants.

(10) Neither the Trustee nor the Note Registrar shall have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer or exchange imposed under this Indenture or under applicable law with respect to any transfer or exchange of any interest in any note (including any transfers between or among Participants or other beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

The Trustee in each of its various capacities as designated from time to time hereunder 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 in any Global Note) other than to require deliver of such certificates and other documentation or evidence as are expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.07 **Mutilated, Destroyed, Lost or Stolen Notes.** In case any Note shall become mutilated or be destroyed, lost or stolen, the Issuer in its discretion may execute, and upon its written request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and make available for delivery, a new Note, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case, the applicant for a substituted Note 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 connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Issuer, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Following receipt by the Trustee or such authenticating agent, as the case may be, of satisfactory security or indemnity and evidence, as described in the preceding paragraph, the Trustee or such authenticating agent may authenticate any such substituted Note and make available for delivery such Note. Upon the issuance of any substituted Note, the Issuer may require the payment by the Holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. In case any Note which has matured or is about to mature, has been repurchased or is subject to a Change of Control Offer or has been called for redemption, as the case may be, shall become mutilated or be destroyed, lost or stolen, the Issuer may, instead of issuing a substitute Note, pay or authorize the payment of, as the case may be, if the applicant for such payment 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 evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.07 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment or exchange or redemption of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment or redemption of negotiable instruments or other securities without their surrender.

Section 2.08 Temporary Notes. 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 temporary Notes, 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. 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 each office or agency maintained by the Issuer pursuant to Section 4.02 hereof 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.

Section 2.09 Cancellation of Notes. All Notes surrendered for the purpose of payment, redemption or registration of transfer shall, if surrendered to the Issuer or any Paying Agent, which shall initially be the Trustee, or any Note Registrar, be surrendered to the Trustee and promptly canceled by it or, if surrendered to the Trustee, shall be promptly canceled by it and no Notes shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of such canceled Notes in accordance with its customary procedures, with copies of such cancelled Notes and related documentation provided to the Issuer. If the Issuer shall acquire any of the Notes, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation.

Section 2.10 CUSIP Numbers. The Issuer in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Noteholders; 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 of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Trustee of any change in the "CUSIP" numbers.

Section 2.11 Issuance of Additional Notes. The Issuer will be entitled, upon delivery of an Officers' Certificate, Opinion of Counsel and Authentication Order, subject to its compliance with Section 4.09 hereof, to issue Additional Notes under the Indenture that will have identical terms to and the same CUSIP number as the Initial Notes issued on the date of this Indenture other than with respect to the date of issuance, issue price and interest accrued prior to the issue date of the Additional Notes and, if applicable, the first interest payment date; provided, that such Additional Notes must be part of the same issue as and fungible with the Initial Notes for United States federal income tax purposes. The Initial Notes and any such Additional Notes will constitute a single series of debt securities, and in circumstances in which this Indenture provides for the Holders of Notes to vote or take any action, the Holders of Initial Notes and the Holders of any such Additional Notes will vote or take the action as a single class.

With respect to any Additional Notes, the Issuer will set forth in a resolution of its Board of Directors and an Officers' Certificate, a copy of each of which will be delivered to the Trustee, the following information:

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

(2) the issue price, the issue date, first interest payment date and the CUSIP number of such Additional Notes; and

(3) whether such Additional Notes shall be transfer restricted Notes and issued in the form of Initial Notes as set forth in Section 2.04 of this Indenture.

Section 2.12 **Debt Rating Effect on Interest Rate.** If a Debt Rating (as defined below) is downgraded below an Investment Grade Rating or withdrawn entirely as of the beginning of any six-month interest period under the Notes, additional interest on the Notes shall accrue during such six-month interest period based upon the Debt Rating as set forth below (“Debt Rating Additional Interest”):

Debt Rating	Interest Rate
BB+ (or the equivalent) or lower, but higher than B+ (or the equivalent)	6.50% (an increase of 75 basis points over the initial interest rate on the Notes)
B+ (or the equivalent) or lower	6.75% (an increase of 100 basis points over the initial interest rate on the Notes)
No rating	7.00% (an increase of 125 basis points over the initial interest rate on the Notes)

For purposes of this Section 2.12, “Debt Rating” means, as of any date of determination, the rating as determined by a minimum of one nationally recognized statistical rating organization, including Egan Jones, S&P, Moody’s or Fitch of the Notes; provided that (1) if the respective Debt Ratings issued by the foregoing rating agencies differ by one level, then the interest rate for the higher of such Debt Ratings shall apply, and (2) if there is a split in Debt Ratings of more than one level, then the interest rate that is one level lower than the higher Debt Rating shall apply.

Each change in the interest rate resulting from a publicly-announced change in the Debt Rating shall be effective commencing as of the beginning of the first six-month interest period following the public announcement thereof and ending on the date immediately preceding the effective date of the next such change. The Issuer shall pay the Debt Rating Additional Interest to Holders entitled thereto in the same manner as interest is paid on the Notes.

ARTICLE 3 REDEMPTION AND REPURCHASE OF NOTES

Section 3.01 **Optional Redemption of Notes.**

(a) The Issuer shall have the right to redeem the Notes at its option and in its sole discretion at any time in whole or from time to time in part prior to the Maturity Date, in whole or in part. Prior to the Par Call Date, the redemption price (“**Redemption Price**”) will equal the greater of (i) 100% of the principal amount of the Notes to be redeemed or (ii) as determined by the Quotation Agent, the sum of the present values of the remaining scheduled payments of principal and interest thereon (not including any portion of such payments of interest accrued as of the Redemption Date) that would be due if such Notes matured on the Par Call Date, discounted to the Redemption Date on a semi-annual basis (assuming a 360-day year consisting of twelve (12) 30-day months) at the Adjusted Treasury Rate plus 50 basis points, plus, in each case, accrued and unpaid interest thereon to, but excluding, the Redemption Date; provided, however, that if the Redemption Date falls after a Record Date and on or prior to the corresponding Interest Payment Date, the Issuer will pay the full amount of accrued and unpaid interest, if any (plus Additional Interest, if applicable), on such Interest Payment Date to the Holder of record at the close of business on the corresponding Record Date (instead of the Holder surrendering its Notes for redemption). If the Notes are redeemed on or after the Par Call Date, the Redemption Price will be equal to 100% of the principal amount of the Notes being redeemed, plus accrued and unpaid interest thereon, if any, to, but excluding, the Redemption Date.

(b) The Issuer shall not redeem the Notes pursuant to Section 3.01(a) hereof on any date if the principal amount of the Notes has been accelerated, and such an acceleration has not been rescinded or cured on or prior to such date (except in the case of an acceleration resulting from a default by the Issuer in the payment of the Redemption Price with respect to the Notes to be redeemed).

Section 3.02 Notice of Optional Redemption; Selection of Notes. In case the Issuer shall desire to exercise the right to redeem all or, as the case may be, any part of the Notes pursuant to Section 3.01 hereof, it shall fix a date for redemption and it or, at its written request received by the Trustee not fewer than five (5) Business Days prior (or such shorter period of time as may be acceptable to the Trustee) to the date the notice of redemption is to be delivered to the Holders, the Trustee in the name of and at the expense of the Issuer, shall deliver or cause to be delivered a notice of such redemption not fewer than fifteen (15) calendar days nor more than sixty (60) calendar days prior to the Redemption Date (except that notice of redemption may be given more than sixty (60) calendar days prior to a Redemption Date if such notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture) to each Holder of Notes so to be redeemed in whole or in part at its last address as the same appears on the Note Register; *provided*, that if the Issuer makes such request of the Trustee, it shall, together with such request, also give written notice of the Redemption Date to the Trustee; *provided further* that the text of the notice shall be prepared by the Issuer. Such delivery shall be made through the facilities of the Depository. The notice, if delivered through the facilities of the Depository, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice.

Notice of any redemption may, in the Issuer's discretion, be subject to one or more conditions precedent, including completion of a corporate transaction. In such event, the related notice of redemption will describe each such condition and, if applicable, will state that, in the Issuer's discretion, the Redemption Date may be delayed until such time as any or all such conditions shall be satisfied or waived, or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied or waived. If any condition precedent provided for in the notice of redemption has not been satisfied following delivery of such notice pursuant to this Section 3.02, the Issuer shall notify the Trustee in writing prior to the close of business two (2) Business Days prior to the Redemption Date (or such shorter period as may be acceptable to the Trustee). Upon receipt of such notice by the Trustee, (i) the notice of redemption shall be rescinded or delayed, and the redemption of the Notes shall be rescinded or delayed as provided in such notice; and (ii) the Trustee shall deliver such notice to each Holder in the same manner in which the notice of redemption was given.

In any case, failure to give such notice or any defect in the 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.

Each such notice of redemption shall specify: (i) the aggregate principal amount of Notes to be redeemed, (ii) the CUSIP number or numbers, if any, of the Notes being redeemed, (iii) the Redemption Date (which shall be a Business Day), (iv) the Redemption Price at which Notes are to be redeemed, (v) the place or places of payment and that payment will be made upon presentation and surrender of such Notes, (vi) that interest accrued and unpaid to, but excluding, the Redemption Date will be paid as specified in said notice, and that on and after said date interest thereon or on the portion thereof to be redeemed will cease to accrue, and (vii) any conditions precedent to such redemption. If fewer than all the Notes are to be redeemed, the notice of redemption shall identify the Notes to be redeemed (including CUSIP numbers, if any). In case any Note is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that, on and after the Redemption Date, upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion thereof will be issued.

Whenever any Notes are to be redeemed, the Issuer will give the Trustee written notice five (5) Business Days (or such shorter period of time as may be acceptable to the Trustee) prior to when the date notice of the redemption is due to applicable Holders, together with an Officers' Certificate with the information in set forth in the immediately preceding paragraph and shall authorize and direct the Trustee to post the notice of redemption to applicable Holders.

On or prior to the Redemption Date specified in the notice of redemption given as provided in this Section 3.02, the Issuer will deposit with the Paying Agent (or, if the Issuer is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.04 hereof) an amount of monies in immediately available funds sufficient to redeem on the Redemption Date all the Notes (or portions thereof) so called for redemption at the appropriate Redemption Price; provided, that if such payment is made on the Redemption Date, it must be received by the Paying Agent, by 11:00 a.m., New York City time, on such date. The Issuer shall be entitled to retain any interest, yield or gain on amounts deposited with the Paying Agent pursuant to this Section 3.02 in excess of amounts required hereunder to pay the Redemption Price. On or prior to the Redemption Date, the Issuer will give the Trustee an Officers' Certificate and Opinion of Counsel each stating that all conditions precedent to such Redemption have been satisfied and the Officers' Certificate shall also authorize and direct the Trustee to apply the redemption funds towards the redemption of the Notes on the Redemption Date.

If less than all of the outstanding Notes are to be redeemed, in the case of Definitive Notes, the Trustee shall select the Notes or portions thereof to be redeemed (in principal amounts of \$2,000 and integral multiples of \$1,000 in excess thereof), on a pro rata basis or such other method the Trustee deems fair and appropriate or, in the case of Global Notes, in accordance with the policies and procedures as is required by the Depository. The Notes (or portions thereof) so selected for redemption shall be deemed duly selected for redemption for all purposes hereof.

Section 3.03 Payment of Notes Called for Redemption by the Issuer. If notice of redemption has been given as provided in Section 3.02 hereof, and any conditions specified therein have been satisfied or waived, the Notes or portion of Notes with respect to which such notice has been given shall become due and payable on the Redemption Date and at the place or places stated in such notice at the Redemption Price, and unless the Issuer shall default in the payment of such Notes at the Redemption Price, so long as Paying Agent holds funds sufficient to pay the Redemption Price of the Notes to be redeemed on the Redemption Date, then (a) such Notes will cease to be outstanding on and after the Redemption Date, (b) interest on the Notes or portion of Notes so called for redemption shall cease to accrue on and after the Redemption Date, and (c) the Holders of the Notes shall have no right in respect of such Notes except the right to receive the Redemption Price thereof, in each case, whether or not transfer of the Notes is made and whether or not any Notes in certificated form, together with the necessary endorsements, are delivered to the Paying Agent. On presentation and surrender of such Notes at a place of payment in said notice specified, the said Notes or the specified portions thereof shall be paid and redeemed by the Issuer at the Redemption Price, together with interest accrued thereon to, but excluding, the Redemption Date.

Upon presentation of any Note redeemed in part only, the Issuer shall execute and the Trustee shall authenticate and make available for delivery to the Holder thereof, at the expense of the Issuer, a new Note or Notes, of authorized denominations, in principal amount equal to the unredeemed portion of the Notes so presented.

Section 3.04 Sinking Fund. There shall be no sinking fund provided for the Notes.

Section 3.05 Change of Control Triggering Event. Upon the occurrence of a Change of Control Triggering Event, unless the Issuer or a third party has previously or concurrently delivered a redemption notice with respect to all of the outstanding Notes as described in this Article, the Issuer shall offer to repurchase the Notes as described in this Section 3.05 (the “Change of Control Offer”) at a price equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase.

Within thirty (30) calendar days following the date upon which the Change of Control Triggering Event occurs, the Issuer must send, or cause the Trustee to send, a notice to each Holder, with a copy to the Trustee (if the Issuer sends such notice), which notice shall govern the terms of the Change of Control Offer. Such notice shall state, among other things, the repurchase date, which must be no earlier than fifteen (15) calendar days nor later than sixty (60) calendar days after the date such notice is delivered, other than as may be required by law (the “**Change of Control Payment Date**”). Holders electing to have a Note repurchased pursuant to a Change of Control Offer will be required to surrender the Note, with the form entitled “Option of Holder to Elect Purchase” on the reverse of the Note completed and specifying the portion (in a minimum principal amount of \$2,000 and integral multiples of \$1,000 in excess thereof) of such Holder’s Notes that it agrees to sell to the Issuer pursuant to the Change of Control Offer, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day prior to the Change of Control Payment Date. For Global Notes, the delivery of a Change of Control Notice and the repurchase of beneficial interests in any such Global Note pursuant to a Change of Control Triggering Event shall be effected through the Depository in accordance with this Indenture and the applicable procedures of the Depository.

The Issuer will not be required to make a Change of Control Offer upon the occurrence of a Change of Control Triggering Event 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 herein applicable to a Change of Control Offer made by the Issuer and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer. Notwithstanding any provision hereof to the contrary, the Issuer (or a third party) may make a Change of Control Offer in advance of, and conditioned upon, any Change of Control Triggering Event.

The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of Notes as a result of a Change of Control Triggering Event. To the extent that the provisions of any securities laws or regulations conflict with the provisions hereof related to a Change of Control Offer, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations hereunder by virtue thereof.

Section 3.06 **Repurchase.** Without limiting anything else in this Article, the Issuer may also, to the extent permitted by law, and directly or indirectly (regardless of whether such Notes are surrendered to the Issuer), repurchase Notes in the open market or otherwise, whether by the Issuer or the Issuer's Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements or otherwise, including by cash-settled swaps or other derivatives. The Issuer will cause any Notes so repurchased (other than Notes repurchased pursuant to cash-settled swaps or other derivatives) to be surrendered to the Trustee for cancellation, and such Notes will no longer be considered outstanding under this Indenture upon their repurchase.

ARTICLE 4 CERTAIN COVENANTS OF THE ISSUER

Section 4.01 **Payment of Principal, Premium and Interest.** The Issuer covenants and agrees that it will duly and punctually pay or cause to be paid when due the principal of (including the Redemption Price upon redemption and payment of a Change of Control Offer on the Change of Control Payment Date, in each case pursuant to Article 3 hereof), and premium, if any, and interest and Additional Interest, if any, on each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes; provided, that the Issuer or Paying Agent may withhold from payments of interest and upon redemption pursuant to Article 3 hereof, maturity or otherwise, any amounts the Issuer or Paying Agent is required to withhold by law.

Section 4.02 **Maintenance of Office or Agency.** The Issuer will maintain an office or agency, where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or redemption and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. As of the date of this Indenture, such office shall be the Corporate Trust Office and, at any other time, at such other address as the Trustee may designate from time to time by notice to the Issuer. The Issuer will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. 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 at the Corporate Trust Office.

The Issuer may also from time to time designate co-registrars and one or more 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. The Issuer will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuer hereby initially designates the Trustee as Paying Agent, Note Registrar and Custodian, and the Corporate Trust Office shall be considered as one such office or agency of the Issuer for each of the aforesaid purposes.

So long as the Trustee is the Note Registrar, the Trustee agrees to deliver the notices set forth in Section 7.10 and the third paragraph of Section 7.11 hereof, if applicable, in accordance with the procedures of the Depository. If co-registrars have been appointed in accordance with this Section 4.02, the Trustee shall mail such notices only to the Issuer and the Holders of Notes it can identify from its records.

Section 4.03 **Appointments to Fill Vacancies in Trustee's Office.** The Issuer, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, upon the terms and conditions and otherwise as provided in Section 7.10 hereof, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.04 **Provisions as to Paying Agent.**

(a) If the Issuer shall appoint a Paying Agent other than the Trustee, or if the Trustee shall appoint such a Paying Agent, the Issuer will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(1) that it will hold all sums held by it as such agent for the payment of the principal of and premium, if any, or interest on the Notes (whether such sums have been paid to it by the Issuer or by any other obligor on the Notes) in trust for the benefit of the Holders of the Notes;

(2) that it will give the Trustee notice of any failure by the Issuer (or by any other obligor on the Notes) to make any payment of the principal of and premium, if any, or interest on the Notes when the same shall be due and payable; and

(3) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Issuer shall, on or before each due date of the principal of, premium, if any, or interest on the Notes, deposit with the Paying Agent a sum (in funds which are immediately available on the due date for such payment) sufficient to pay such principal, premium, if any, or interest and (unless such Paying Agent is the Trustee) the Issuer will promptly notify the Trustee of any failure to take such action; provided, that if such deposit is made on the due date, such deposit shall be received by the Paying Agent by no later than 11:00 a.m. New York City time, on such date.

(b) If the Issuer shall act as its own Paying Agent, it will, on or before each due date of the principal of, premium, if any, or interest on the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal, premium, if any, and interest so becoming due and will promptly notify the Trustee of any failure to take such action and of any failure by the Issuer (or any other obligor under the Notes) to make any payment of the principal of, premium, if any, or interest on the Notes when the same shall become due and payable.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Issuer may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Issuer or any Paying Agent hereunder as required by this Section 4.04, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Issuer or any Paying Agent to the Trustee, the Issuer or such Paying Agent shall be released from all further liability with respect to such sums.

(d) Anything in this Section 4.04 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 4.04 is subject to Section 11.02 and Section 11.03 hereof.

The Trustee shall not be responsible for, and shall have no liability for, the actions of any other Paying Agents (including the Issuer if acting as its own Paying Agent) and shall have no control of any funds held by such other Paying Agents.

Section 4.05 **Existence.** Subject to Article 10 hereof, the Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and rights (charter and statutory); provided, that the Issuer shall not be required to preserve any such right if the Issuer shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Issuer and that the loss thereof is not disadvantageous in any material respect to the Noteholders.

Section 4.06 **Reports.**

(a) Whether or not required by the rules and regulations of the Commission, so long as any Notes are outstanding, the Issuer will furnish to the Trustee:

- (1) all quarterly and annual reports that would be required to be filed with the Commission on Forms 10-Q and 10-K if the Issuer were required to file such reports; and
- (2) all current reports that would be required to be filed with the Commission on Form 8-K if the Issuer were required to file such reports,

in each case within fifteen (15) days after the Issuer files such reports with the Commission or would be required to file such reports with the Commission pursuant to the applicable rules and regulations of the Commission, whichever is earlier. Reports, information and documents filed with the Commission via the Commission's Electronic Data Gathering, Analysis and Retrieval system ("EDGAR") will be deemed to be delivered to the Trustee as of the time of such filing via EDGAR for purposes of this covenant; provided, however, that the Trustee shall have no obligation whatsoever to determine whether or not such information, documents or reports have been filed via EDGAR. 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 rely exclusively on Officers' Certificates).

All such reports will be prepared in all material respects in accordance with all of the rules and regulations applicable to such reports. Each annual report on Form 10-K will include a report on the Issuer's consolidated financial statements by its independent registered public accounting firm, unless otherwise permitted by the Commission.

(b) For so long as any Notes remain outstanding, if at any time it is not required to file with the Commission the reports required by paragraphs (a) of this Section 4.06, the Issuer will furnish to the Holders, beneficial owners, securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

Section 4.07 Stay, Extension and Usury Laws. The Issuer covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Issuer from paying all or any portion of the principal, premium, if any, or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture and the Issuer (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, 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 4.08 Compliance Certificate. Within one hundred twenty (120) calendar days after the end of each fiscal year of the Issuer, the Issuer shall deliver to the Trustee a certificate signed by any of a principal executive officer, principal financial officer or principal accounting officer of the Issuer, stating whether or not the signer has knowledge of any Default under this Indenture, and, if so, specifying each Default and the nature and the status thereof.

The Issuer will deliver to the Trustee, within thirty (30) calendar days of becoming aware of (i) any default in the performance or observance of any covenant, agreement or condition contained in this Indenture, or (ii) any Event of Default, an Officers' Certificate specifying with particularity such default or Event of Default and further stating what action the Issuer has taken, is taking or proposes to take with respect thereto.

Any notice required to be given under this Section 4.08 shall be delivered to a Responsible Officer of the Trustee at its Corporate Trust Office.

(a) **Limitation on Total Outstanding Debt.** The aggregate principal amount of all of the Issuer's and the Issuer's Subsidiaries' outstanding Debt on a consolidated basis determined in accordance with generally accepted accounting principles in the United States, as of the close of business on the last day of each fiscal quarter, shall not be greater than 60% of the Issuer's and the Issuer's Subsidiaries' Total Assets on a consolidated basis as of the end of such fiscal quarter.

(b) **Limitation on Secured Debt.** The aggregate principal amount of all of the Issuer's and the Issuer's Subsidiaries' outstanding Debt on a consolidated basis determined in accordance with generally accepted accounting principles in the United States, as of the close of business on the last day of each fiscal quarter, which is secured by any mortgage, lien, charge, pledge, encumbrance or security interest on the Issuer's or the Issuer's Subsidiaries' property, shall not be greater than 25% of the Issuer's and the Issuer's Subsidiaries' Total Assets on a consolidated basis as of the end of such fiscal quarter.

(c) **Ratio of Consolidated Income Available for Debt Service to the Annual Debt Service Charge.** The Issuer will not, and will not permit any of its Subsidiaries to, directly or indirectly, incur, issue, assume, guarantee or otherwise become liable, contingently or otherwise, with respect to (collectively, "incur") any Debt (including Acquired Debt); *provided* that subject to Section 4.09(a) and Section 4.09(b), the Issuer and its Subsidiaries may incur Debt (including Acquired Debt) if the ratio of Consolidated Income Available for Debt Service to the Annual Debt Service Charge for the Issuer's most recently ended four consecutive fiscal quarters for which financial statements are available immediately preceding the date on which such additional Debt is incurred, would have been not less than 1.5 to 1.0, determined on an unaudited *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Debt had been incurred at the beginning of such four-quarter period, and calculated on the assumption that: (1) any Debt incurred by the Issuer and the Issuer's Subsidiaries since the first day of such four-quarter period and the application of the proceeds therefrom, including to refinance other Debt, had occurred at the beginning of such period; (2) the repayment or retirement of any other Debt by the Issuer and the Issuer's Subsidiaries since the first day of such four-quarter period had been repaid or retired at the beginning of such period (except that, in making such computation, the amount of Debt under any revolving credit facility shall be computed based upon the average daily balance of such Debt during such period); (3) in the case of Acquired Debt or Debt incurred in connection with any acquisition since the first day of such four-quarter period, the related acquisition had occurred as of the first day of such period, with the appropriate adjustments with respect to such acquisition being included in such unaudited *pro forma* calculation; and (4) in the case of any acquisition or disposition by the Issuer or the Issuer's Subsidiaries of any asset or group of assets or other placement of any assets in service or removal of any assets from service by the Issuer or any of the Issuer's Subsidiaries since the first day of such four-quarter period, whether by merger, stock purchase or sale, or asset purchase or sale, such acquisition, disposition, placement in service, new agreement, amendment to an existing agreement or removal from service, or any related repayment of Debt had occurred as of the first day of such period, with the appropriate adjustments with respect to such acquisition, disposition, placement in service, new agreement, amendment to an existing agreement or removal from service, being included in such unaudited *pro forma* calculation.

The foregoing paragraph will not prohibit the incurrence of the following items of Debt:

- (1) subject to Section 4.09(a) and Section 4.09(b), the incurrence by us and our subsidiaries of additional Debt and letters of credit under a Credit Facility (including, without limitation, the Revolving Credit Facility) in an aggregate principal amount under this clause (1) not to exceed, at any time outstanding, the greater of (x) \$50.0 million and (y) 20% of the Issuer's and the Issuer's Subsidiaries' Total Assets on a consolidated basis; *provided* that in the case of any Debt outstanding under this clause (1), (i) in the case of any such Debt outstanding under the Revolving Credit Facility, such Debt is subject to the Revolving Credit Facility Purchase Option and (ii) in the case of any other Debt incurred or outstanding in reliance on this clause (1), such Debt is subject to an Acceptable Purchase Option Agreement; and

- (2) the incurrence by the Issuer and the Issuer's Subsidiaries of Debt represented by the Notes to be issued on the issue date of the Notes and any related Guarantees (whether such Guarantees are issued on the issue date or otherwise).

Section 4.10 **Insurance.** The Issuer will, and will cause each of the Issuer's Subsidiaries to, maintain insurance against such risks and in such amounts as is customarily maintained by Persons engaged in similar businesses or as may be required by applicable law.

Section 4.11 **Additional Interest Notice.** In the event that the Issuer is required to pay Additional Interest to Holders of Notes pursuant to this Indenture, the Issuer will provide written notice ("Additional Interest Notice") to the Trustee of its obligation to pay Additional Interest no later than fifteen (15) calendar days prior to the proposed Interest Payment Date for Additional Interest, and the Additional Interest Notice shall set forth the amount of Additional Interest to be paid by the Issuer on such Interest Payment Date. The Trustee shall not at any time be under any duty or responsibility to any Holder of Notes to determine the Additional Interest, or with respect to the nature, extent or calculation of the amount of Additional Interest when made, or with respect to the method employed in such calculation of the Additional Interest. The Issuer shall pay the Additional Interest to Holders entitled thereto in the same manner as interest is paid on the Notes.

ARTICLE 5 NOTEHOLDERS' LISTS AND REPORTS BY THE ISSUER AND THE TRUSTEE

Section 5.01 **Noteholders' Lists.** The Issuer covenants and agrees that it will furnish or cause to be furnished to the Trustee, semiannually, not more than fifteen (15) calendar days after each March 31 and September 30 of each year beginning with March 31, 2022, and at such other times as the Trustee may reasonably request in writing, within thirty (30) calendar days after receipt by the Issuer of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that, in each case, no such list need be furnished by the Issuer to the Trustee so long as the Trustee is acting as the sole Note Registrar.

Section 5.02 **Preservation and Disclosure of Lists.**

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders of Notes contained in the most recent list furnished to it as provided in Section 5.01 hereof or maintained by the Trustee in its capacity as Note Registrar or co-registrar in respect of the Notes, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 hereof upon receipt of a new list so furnished.

Section 5.03 **[Reserved].**

ARTICLE 6 REMEDIES OF THE TRUSTEE AND NOTEHOLDERS ON AN EVENT OF DEFAULT

Section 6.01 **Events of Default.** In case one or more of the following (each an "Event of Default") (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall have occurred and be continuing:

(a) default for ninety (90) days in the payment of any installment of interest under the Notes;

(b) default in the payment of the principal amount (including the Redemption Price upon redemption and payment of a Change of Control Offer on the Change of Control Payment Date, in each case, pursuant to Article 3 hereof) due with respect to the Notes, when the same becomes due and payable; provided, however, that a valid extension of the Maturity Date in accordance with the terms hereof shall not constitute a default in the payment of principal;

(c) the Issuer fails to comply with any of the Issuer's other agreements contained in the Notes or this Indenture upon receipt by the Issuer of notice of such default by the Trustee or by Holders of not less than twenty five percent (25 %) in aggregate principal amount of the Notes then outstanding and the Issuer fails to cure (or obtain a waiver of) such default within ninety (90) days after the Issuer receives such notice;

(d) failure to pay any indebtedness for monies borrowed by the Issuer or any Significant Subsidiary of the Issuer in an outstanding principal amount in excess of \$20,000,000 at final maturity or upon acceleration after the expiration of any applicable grace period, which indebtedness is not discharged, or such default in payment or acceleration is not cured or rescinded, within thirty (30) days after written notice to the Issuer from the Trustee (or to the Issuer and the Trustee from Holders of at least twenty five percent (25%) in principal amount of the outstanding Notes);

(e) the Issuer or any Significant Subsidiary of the Issuer pursuant to or under or within meaning of any Bankruptcy Law:

(i) commences a voluntary case or proceeding seeking liquidation, reorganization or other relief with respect to the Issuer or a Significant Subsidiary of the Issuer or its debts or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Issuer or a Significant Subsidiary of the Issuer or any substantial part of the property of the Issuer or a Significant Subsidiary of the Issuer; or

(ii) consents to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against the Issuer or a Significant Subsidiary of the Issuer; or

(iii) consents to the appointment of a custodian of it or for all or substantially all of its property; or

(iv) makes a general assignment for the benefit of creditors;

(f) an involuntary case or other proceeding shall be commenced against the Issuer or any Significant Subsidiary of the Issuer seeking liquidation, reorganization or other relief with respect to the Issuer or a Significant Subsidiary of the Issuer or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Issuer or a Significant Subsidiary of the Issuer or any substantial part of the property of the Issuer or a Significant Subsidiary of the Issuer, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of thirty (30) calendar days;

(g) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Issuer or any Significant Subsidiary of the Issuer in an involuntary case or proceeding; or

(ii) appoints a trustee, receiver, liquidator, custodian or other similar official of the Issuer or a Significant Subsidiary of the Issuer or any substantial part of the property of the Issuer or a Significant Subsidiary of the Issuer; or

(iii) orders the liquidation of the Issuer or a Significant Subsidiary of the Issuer; and, in each case in this clause (g), the order or decree remains unstayed and in effect for thirty (30) calendar days,

then, in each and every such case (other than an Event of Default specified in Section 6.01(e), Section 6.01(f) or Section 6.01(g) hereof with respect to the Issuer), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the Holders of at least twenty five percent (25%) in aggregate principal amount of the Notes then outstanding, by notice in writing to the Issuer (and to the Trustee if given by Noteholders), may declare the principal amount of and premium, if any, and interest accrued and unpaid on all the Notes to be immediately due and payable, and upon any such declaration the same shall be immediately due and payable.

If an Event of Default specified in Section 6.01(e), Section 6.01(f) or Section 6.01(g) hereof occurs with respect to the Issuer, the principal amount of and premium, if any, and interest accrued and unpaid on all the Notes shall be immediately and automatically due and payable without necessity of further action.

If, at any time after the principal amount of and premium, if any, and interest on the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, Holders of a majority in aggregate principal amount of the Notes then outstanding on behalf of the Holders of all of the Notes then outstanding, by written notice to the Issuer and to the Trustee, may waive all defaults or Events of Default and rescind and annul such declaration and its consequences, subject in all respects to Section 6.07 hereof, if (a) all Events of Default, other than the nonpayment of the principal amount and any accrued and unpaid interest that have become due solely because of such acceleration, have been cured or waived and (b) the Issuer has deposited with the Trustee all required payments of the principal of and interest on the Notes and paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances pursuant to Section 7.06. No such rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. The Issuer shall notify in writing a Responsible Officer of the Trustee, promptly upon becoming aware thereof, of any Event of Default, as provided in Section 4.08 hereof.

The sole remedy for any violation of any obligations the Issuer may be deemed to have pursuant to Section 4.06 hereof shall be the accrual of additional interest on the Notes in the manner set forth herein at a rate of 0.25% per annum, payable semiannually. In no event shall Additional Interest (other than any Debt Rating Additional Interest) accrue at a per annum rate in excess of 0.50% per annum pursuant to this Indenture, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such waiver or rescission and annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Issuer, the Holders of Notes, and the Trustee shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Issuer, the Holders of Notes, and the Trustee shall continue as though no such proceeding had been taken.

Section 6.02 Payments of Notes on Default; Suit Therefor. The Issuer covenants that in the case of an Event of Default pursuant to Section 6.01(a) or Section 6.01(b) hereof, upon demand of the Trustee, the Issuer will pay to the Trustee, for the benefit of the Holders of the Notes, (i) the whole amount that then shall be due and payable on all such Notes for principal and premium, if any, or interest, as the case may be, and, (ii) in addition thereto, any amounts due the Trustee under Section 7.06 hereof. Until such demand by the Trustee, the Issuer may pay the principal of and premium, if any, and interest on the Notes to the registered Holders, whether or not the Notes are overdue.

In case the Issuer shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Issuer or any other obligor on the Notes and collect in the manner provided by law out of the property of the Issuer or any other obligor on the Notes wherever situated the monies adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Issuer or any other obligor on the Notes under any Bankruptcy Law, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Issuer or such other obligor, the property of the Issuer or such other obligor, or in the case of any other judicial proceedings relative to the Issuer or such other obligor upon the Notes, or to the creditors or property of the Issuer or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.02, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal, premium, if any, accrued and unpaid interest in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Noteholders allowed in such judicial proceedings relative to the Issuer or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due the Trustee under Section 7.06 hereof, and to take any other action with respect to such claims, including participating as a member of any official committee of creditors, as it reasonably deems necessary or advisable, unless prohibited by law or applicable regulations, and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Noteholders 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 Noteholders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including counsel fees and expenses incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property which the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or 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 of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

Section 6.03 Application of Monies Collected by Trustee. Any monies collected by the Trustee pursuant to this Article 6, shall be applied, in the following order, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 7.06 hereof;

SECOND: In case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of accrued and unpaid interest, if any, on the Notes in default in the order of the maturity of the installments of such interest, such payments to be made ratably to the Persons entitled thereto;

THIRD: In case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount then owing and unpaid upon the Notes for principal and premium, if any, and interest, with interest on the overdue principal and premium, if any, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of accrued and unpaid interest, as provided in Section 6.02 hereof, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal and premium, if any, and interest without preference or priority of principal and premium, if any, over interest, or of interest over principal and premium, if any, or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal and premium, if any, and accrued and unpaid interest; and

FOURTH: To the payment of the remainder, if any, to the Issuer or any other Person lawfully entitled thereto.

If any Holder fails to present its Note, any funds due and payable on account of such Note may be escheated in accordance with applicable law.

Section 6.04 Proceedings by Noteholders. No Holder of any Note shall have any right by virtue of or by reference to any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, except in the case of a default in the payment of principal, premium, if any, or interest on the Notes, unless (a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as hereinbefore provided, (b) the Holders of at least twenty five percent (25%) in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such security or indemnity that is satisfactory to it against the costs, liabilities or expenses to be incurred therein or thereby (including fees of the Trustee's legal counsel), (c) the Trustee for ninety (90) calendar days after its receipt of such notice, request and offer of indemnity, shall have refused to institute any such action, suit or proceeding and (d) no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 6.07 hereof; it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee, that no one or more Holders of Notes shall have any right in any manner whatever by virtue of or by reference to any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder of Notes, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders of Notes (except as otherwise provided herein). For the protection and enforcement of this Section 6.04, each and every Noteholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any Holder of any Note to receive payment of the principal of (including the Redemption Price upon redemption and payment of a Change of Control Offer on the Change of Control Payment Date, in each case, pursuant to Article 3 hereof) and premium, if any, and accrued interest and Additional Interest, if any, on such Note, on or after the respective due dates expressed in such Note or in the event of redemption, or to institute suit for the enforcement of any such payment on or after such respective dates against the Issuer shall not be impaired or affected without the consent of such Holder.

Section 6.05 Proceedings by Trustee. In case of an Event of Default, the Trustee may, in its sole discretion, proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.06 Remedies Cumulative and Continuing. All powers and remedies given by this Article 6 to the Trustee or to the Noteholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such Default or any acquiescence therein, and, subject to the provisions of Section 6.04 hereof, every power and remedy given by this Article 6 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Noteholders.

Section 6.07 **Direction of Proceedings and Waiver of Defaults by Majority of Noteholders.** The Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; provided, that (a) such holders shall have offered to the Trustee such security and/or indemnity satisfactory to the Trustee against any costs, liabilities or expenses to be incurred therein or thereby (including fees of the Trustee's legal counsel), (b) such direction shall not be in conflict with any rule of law or with this Indenture, (c) the Trustee may take any other action it deems proper which is not inconsistent with such direction, (d) the Trustee may decline to take any action that would benefit some Noteholders to the detriment of other Noteholders or otherwise be unduly prejudicial to the Noteholders not joining therein and (e) the Trustee may decline to take any action that would involve the Trustee in personal liability, subject it to reputational harm or be unduly prejudicial to Holders of Notes not joining therein, it being understood that the Trustee shall have no duty to ascertain whether or not such actions or forbearance are unduly prejudicial to such Holders. Prior to taking any such action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

The Holders of a majority in aggregate principal amount of the Notes at the time outstanding may, on behalf of the Holders of all of the Notes, waive any past Default or Event of Default hereunder and its consequences except (i) a default in the payment of the principal of (including the Redemption Price upon redemption and payment of a Change of Control Offer on the Change of Control Payment Date, in each case, pursuant to Article 3 hereof), premium, if any, or interest and Additional Interest, if any, on the Notes, unless such default has been cured and the Issuer or any Guarantor has deposited with the Trustee all required payments of the principal of, premium, if any, and interest on the Notes (provided, however, that the Holders of a majority in aggregate principal amount of the Notes then outstanding may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration) or (ii) a default in respect of a covenant or provisions hereof which under Article 9 hereof cannot be modified or amended without the consent of the Holders of all Notes then outstanding or each Note affected thereby.

Upon any such waiver, the Issuer, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.07, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.08 **Notice of Defaults.** The Trustee may, within ninety (90) calendar days after a Responsible Officer of the Trustee has written notice of the occurrence of a Default, mail (or send by electronic transmission) to all Noteholders, as the names and addresses of such Holders appear upon the Note Register, notice of all Defaults given in writing to a Responsible Officer, unless such Defaults shall have been cured or waived before the giving of such notice; provided, that except in the case of default in the payment of the principal of (including the Redemption Price upon redemption and payment of a Change of Control Offer on the Change of Control Payment Date, in each case, pursuant to Article 3 hereof), or interest and Additional Interest, if any, on any of the Notes, the Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Trustee in good faith determines that the withholding of such notice is in the interest of the Noteholders.

Section 6.09 **Undertaking to Pay Costs.** All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided, that the provisions of this Section 6.09 (to the extent permitted by law) shall not apply to any suit instituted by the Issuer or any Guarantor, to any suit instituted by the Trustee, to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than ten percent (10%) in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 hereof, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of (including the Redemption Price upon redemption and payment of a Change of Control Offer on the Change of Control Payment Date, in each case, pursuant to Article 3 hereof), or interest and Additional Interest, if any, on any Note on or after the due date expressed in such Note.

ARTICLE 7
THE TRUSTEE

Section 7.01 **Duties and Responsibilities of Trustee.** The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of its own affairs.

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

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith and willful misconduct on the part of the Trustee, the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture;

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless the Trustee was negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the Holders of not less than a majority in principal amount of the Notes at the time outstanding determined as provided in Section 8.04 hereof relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions Sections 7.01, 7.02, and 7.07;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Issuer or any Paying Agent (other than the Trustee) or any records maintained by any co-registrar (other than the Trustee) with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred unless a Responsible Officer of the Trustee has received written notice thereof; and

(g) the Trustee shall not be deemed to have knowledge of any Event of Default hereunder unless a Responsible Officer of the Trustee shall have been notified in writing of such Event of Default by the Issuer or a Holder of Notes.

(h) 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. The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder; provided that only the Trustee, and not any agent, custodian or other Person employed to act hereunder shall be subject to the prudent person standard in and during a Default or Event of Default.

(i) Except as explicitly specified otherwise herein, the Issuer will be responsible for making all calculations required under this Indenture and the Notes, including but not limited to determination of Redemption Price, premium, if any, and any additional amounts or other amounts payable on the Notes. The Issuer will make such calculations in good faith and, absent manifest error, Issuer's calculations will be final and binding on Holders of the Notes. The Issuer will provide a schedule of its calculations to the Trustee, and the Trustee is entitled to conclusively rely upon the accuracy of the Issuer's calculations without independent verification. The Trustee will forward the Issuer's calculations to any Holder of the Notes upon written request.

Section 7.02 **Rights and Protections of the Trustee.** Except as otherwise provided in Section 7.01 hereof:

(a) the Trustee may conclusively rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, Note, coupon or other paper or document (whether in its original, facsimile or electronic form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties. If presented with a non-conforming certificate or opinion, the Trustee may request the delivering party to re-issue the certificate or opinion in the manner required by this Indenture before taking any action;

(b) any request, direction, order or demand of the Issuer mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed) and, if requested by the Trustee, an Opinion of Counsel; and any resolution of the Board of Directors may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Issuer;

(c) the Trustee may consult with counsel or other professionals of its own selection and any advice of such professionals or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by the Trustee hereunder in good faith and in reliance on and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Noteholders pursuant to the provisions of this Indenture, unless such Noteholders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby; provided, however, that the Trustee shall be under no obligation to take any action it believes to be unlawful, contrary to the terms of this Indenture, or that could subject the Trustee to reputational harm;

(e) 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 or other paper or document, but the Trustee 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, personally or by agent or attorney;

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

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

(h) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(i) the Trustee may request that the Issuer deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

(j) any permissive right or authority granted to the Trustee shall not be construed as a mandatory duty;

(k) the Trustee shall not be responsible or liable for punitive, special, indirect, 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 actions;

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

(m) the Trustee shall have no obligation to determine the Debt Rating for purposes of Section 2.12;

(n) the Trustee shall have no obligation to determine whether a Rating Event has occurred; and

(o) the Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has received written notice of such Default or Event of Default from the Issuer or a Holder describing such Default or Event of Default, and stating that such notice is a Notice of Default or Event of Default.

Section 7.03 No Responsibility for Recitals, etc. The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Issuer, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Issuer of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

Section 7.04 Trustee, Paying Agents or Registrar May Own Notes. The Trustee, any Paying 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, Paying Agent or Note Registrar.

Section 7.05 Monies to Be Held in Trust. Subject to the provisions of Section 11.02 hereof, all monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Monies held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. Except as otherwise provided herein, the Trustee shall be under no liability for interest on any monies received by it hereunder except as may be agreed in writing from time to time by the Issuer and the Trustee.

Section 7.06 Compensation and Expenses of Trustee. The Issuer covenants and agrees to pay to the Trustee from time to time as agreed in writing, and the Trustee shall be entitled to, such compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to from time to time in writing between the Issuer and the Trustee, and the Issuer will pay or reimburse the Trustee upon its request for all reasonable expenses and disbursements reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the reasonable fees, expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its gross negligence, willful misconduct or bad faith. The Issuer also covenants to indemnify the Trustee and any predecessor Trustee (or any officer, director or employee of the Trustee), in any capacity under this Indenture and any authenticating agent for, and to hold them harmless against, any and all loss, liability, damage, claim or reasonable expense (including the costs and expenses of enforcing the terms of this Indenture and the indemnifications provided herein (whether asserted by the Issuer, any Holder or any other Person) and taxes (other than taxes based on the income of the Trustee)) incurred without negligence, willful misconduct or bad faith on the part of the Trustee or such officers, directors, employees or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this trust or in any other capacity hereunder, including the reasonable costs and expenses of defending themselves against any claim (whether asserted by the Issuer, any Holder or any other Person) of liability in the premises. The obligations of the Issuer under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for reasonable expenses and disbursements shall be secured by a lien prior to that of the Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Notes. The obligation of the Issuer under this Section 7.06 shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee.

When the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 6.01(e), Section 6.01(f) or Section 6.01(g) hereof with respect to the Issuer occurs, the expenses and the compensation for the services are intended to constitute reasonable expenses of administration under any bankruptcy, insolvency or similar laws.

Section 7.07 Officers' Certificate and/or Opinion of Counsel as Evidence. Except as otherwise provided in Section 7.01 hereof, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate and/or Opinion of Counsel delivered to the Trustee.

Section 7.08 Conflicting Interest 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, this Indenture.

Section 7.09 Eligibility of Trustee. There shall at all times be a Trustee hereunder that is a corporation or other legal entity organized and doing business under the laws of the United States of America or any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by the U.S. federal and state authorities and that has a combined capital and surplus of at least the minimum amount required by the Trust Indenture Act. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section 7.09 the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.10 Resignation or Removal of Trustee.

(a) The Trustee may at any time resign by giving at least thirty (30) days written notice of such resignation to the Issuer and to the Holders of Notes. Upon receiving such notice of resignation, the Issuer shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment thirty (30) calendar days after the mailing of such notice of resignation to the Noteholders, the resigning Trustee may, upon ten (10) Business Days' notice to the Issuer and the Noteholders, appoint a successor identified in such notice or may petition, at the sole expense of the Issuer, any court of competent jurisdiction for the appointment of a successor trustee, or, if any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, subject to the provisions of Section 6.09 hereof, on behalf of itself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with Section 7.08 hereof after written request therefor by the Issuer or by any Noteholder who has been a bona fide holder of a Note or Notes for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 hereof and shall fail to resign after written request therefor by the Issuer or by any such Noteholder; or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Issuer may remove the Trustee with thirty (30) days written notice to the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.09 hereof, any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee; provided, that if no successor Trustee shall have been appointed and have accepted appointment thirty (30) calendar days after either the Issuer or the Noteholders has removed the Trustee, or the Trustee resigns, the Trustee so removed may petition, at the sole expense of the Issuer, any court of competent jurisdiction for an appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.11 hereof.

(d) Notwithstanding the replacement of the Trustee pursuant to this Section 7.10, the Issuer's obligations under Section 7.06 hereof shall continue for the benefit of the retiring Trustee.

(e) The Trustee shall not be liable for any action or inaction on the part of any successor trustee.

Section 7.11 Acceptance by Successor Trustee. Any successor trustee appointed as provided in Section 7.10 hereof shall execute, acknowledge and deliver to the Issuer and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Issuer or of the successor trustee, the trustee ceasing to act shall, upon payment of any amount then due it pursuant to the provisions of Section 7.06 hereof, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Issuer shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property and funds held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 7.06 hereof.

No successor trustee shall accept appointment as provided in this Section 7.11 unless, at the time of such acceptance, such successor trustee shall be qualified under the provisions of Section 7.08 hereof and be eligible under the provisions of Section 7.09 hereof.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.11, the Issuer (or the former trustee, at the written direction of the Issuer) shall mail (or send by electronic transmission) or cause to be mailed (or sent by electronic transmission) notice of the succession of such trustee hereunder to the Holders of Notes at their addresses as they shall appear on the Note Register. If the Issuer fails to mail such notice within ten (10) calendar days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Issuer.

Section 7.12 Succession by Merger. Any corporation into which the Trustee may be merged or exchanged or with which it may be consolidated, or any corporation resulting from any merger, exchange or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee (including any trust created by this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided, that in the case of any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, such corporation shall be qualified under the provisions of Section 7.08 hereof and eligible under the provisions of Section 7.09 hereof.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or any authenticating agent appointed by such successor trustee may authenticate such Notes in the name of the successor trustee; and in all such cases such certificates shall have the full force that is provided in the Notes or in this Indenture; provided, that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, exchange or consolidation.

ARTICLE 8 THE NOTEHOLDERS

Section 8.01 Action by Noteholders. Whenever in this Indenture it is provided that the Holders of a specified percentage in aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Noteholders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders of Notes voting in favor thereof at any meeting of Noteholders, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Noteholders. Whenever the Issuer or the Trustee solicits the taking of any action by the Holders of the Notes, the Issuer or the Trustee may fix in advance of such solicitation a date as the record date for determining Holders entitled to take such action. The record date, if any, shall be not more than fifteen (15) calendar days prior to the date of commencement of solicitation of such action.

Section 8.02 Proof of Execution by Noteholders. Subject to the provisions of Section 7.01 and Section 7.02 hereof, proof of the execution of any instrument by a Noteholder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the registry of such Notes or by a certificate of the Note Registrar.

Section 8.03 Absolute Owners. The Issuer, the Trustee, any Paying Agent and any Note Registrar may deem the Person in whose name such Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Issuer or any Note Registrar) for the purpose of receiving payment of or on account of the principal of (including the Redemption Price upon redemption and payment of a Change of Control Offer on the Change of Control Payment Date, in each case, pursuant to Article 3 hereof), premium, if any, and interest and Additional Interest, if any, on such Note and for all other purposes; and neither the Issuer nor the Trustee nor any Paying Agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable upon any such Note.

Section 8.04 **Issuer-owned Notes Disregarded.** In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture or whether a quorum is present at a meeting of the Holders of the Notes, Notes which are owned by the Issuer or any other obligor on the Notes or any Affiliate of the Issuer or any other obligor on the Notes shall be disregarded and deemed not to be outstanding for the purpose of any such determination; provided, that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action, only Notes which a Responsible Officer knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Notes and that the pledgee is not the Issuer, any other obligor on the Notes or any Affiliate of the Issuer or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Issuer shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Issuer to be owned or held by or for the account of any of the above described Persons, and, subject to Section 7.01 hereof, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05 **Revocation of Consents; Future Holders Bound.** At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01 hereof, of the taking of any action by the Holders of the percentage in aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note which is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02 hereof, revoke such action so far as it concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution herefor.

ARTICLE 9 SUPPLEMENTAL INDENTURES

Section 9.01 **Supplemental Indentures Without Consent of Noteholders.** The Issuer, the Guarantors and the Trustee may, from time to time, and at any time enter into an indenture or indentures supplemental without the consent of the Holders of the Notes hereto for one or more of the following purposes:

- (a) to evidence a successor to the Issuer as obligor or to any Guarantor as guarantor under this Indenture;
- (b) to add to the covenants of the Issuer or any Guarantor for the benefit of the Holders of the Notes or to surrender any right or power conferred upon the Issuer or any Guarantor in this Indenture or in the Notes;
- (c) to add Events of Default for the benefit of the Holders of the Notes;
- (d) to amend or supplement any provisions of this Indenture; *provided* that no amendment or supplement shall materially adversely affect the interests of the Holders of any Notes then outstanding;

(e) to secure the Notes, add Guarantees with respect to the Notes or confirm and evidence the release, termination or discharge of any Guarantee or lien, if any, with respect to or securing the Notes when such release, termination or discharge is provided for under this Indenture or the Notes;

(f) to provide for the acceptance of appointment of a successor Trustee or facilitate the administration of the trusts under this Indenture by more than one Trustee;

(g) to provide for rights of Holders of the Notes if any consolidation, merger or sale of all or substantially all of the property or assets of the Issuer and the Issuer's Subsidiaries, taken as a whole, occurs;

(h) to cure any ambiguity, defect or inconsistency in this Indenture; provided, that this action shall not adversely affect the interests of the Holders of the Notes in any material respect;

(i) to provide for the issuance of Additional Notes in accordance with the limitations set forth in this Indenture;

(j) to supplement any of the provisions of this Indenture to the extent necessary to permit or facilitate defeasance and discharge of any of the Notes; *provided* that the action shall not adversely affect the interests of the Holders of the Notes in any material respect;

(k) to conform the text of this Indenture, the Guarantee or the Notes to any provision of the description thereof set forth in the Offering Memorandum to the extent that such provision in the Offering Memorandum was intended to be a verbatim recitation of a provision in this Indenture, the Guarantee or the Notes;

(l) to make any amendment to the provisions of this Indenture relating to the transfer and legending of Notes as permitted by this Indenture, including, without limitation, to facilitate the issuance and administration of the Notes; *provided, however*, that (i) compliance with this Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Notes;

(m) to comply with any requirement of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act, if such qualification is required; or

(n) to comply with the rules of any applicable Depository.

Upon the written request of the Issuer, accompanied by a copy of the resolutions of the Board of Directors authorizing the execution of any supplemental indenture and an Opinion of Counsel stating that such amendment is authorized or permitted under the Indenture, the Trustee is hereby authorized to join with the Issuer and the Guarantors in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations that may be therein contained and to accept the conveyance, transfer and assignment of any property thereunder, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 9.01 may be executed by the Issuer, the Guarantors and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 9.02 hereof.

Section 9.02 Supplemental Indenture With Consent of Noteholders. With the consent (evidenced as provided in Article 8 hereof) of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, the Issuer, the Guarantors and the Trustee may, from time to time and at any time, enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or modifying in any manner the rights of the Holders of the Notes; provided that no such supplemental indenture shall, without the consent of the Holder of each Note affected thereby:

(a) change the Stated Maturity of the principal of or any installment of interest on the Notes, reduce the principal amount of, or the rate or amount of interest on, or any premium payable on redemption of, the Notes, or adversely affect any right of repayment of the Holder of the Notes, change the place of payment, or the coin or currency, for payment of principal of or interest on any Note or impair the right to institute suit for the enforcement of any payment on or with respect to the Notes;

(b) reduce the percentage in principal amount of the outstanding Notes necessary to modify or amend this Indenture, to waive compliance with certain provisions of this Indenture or certain defaults and their consequences provided in this Indenture, or to reduce the requirements of quorum or change voting requirements set forth in this Indenture;

(c) modify or affect in any manner adverse to the Holders the terms and conditions of the obligations of the Issuer or the Guarantor (except as provided in Section 15.04) in respect of the due and punctual payments of principal and interest; or

(d) modify any of this Section 9.02 or Section 6.07 hereof or any of the provisions relating to the waiver of certain past Defaults or certain covenants, except to increase the required percentage to effect the action or to provide that certain other provisions may not be modified or waived without the consent of the Holders of the Notes.

Upon the written request of the Issuer, accompanied by a copy of the resolutions of the Board of Directors authorizing the execution of any supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Noteholders as aforesaid, the Trustee shall join with the Issuer and the Guarantors in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Noteholders under this Section 9.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Section 9.03 Effect of Supplemental Indenture. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 9, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Issuer and the Holders of Notes shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.04 Notation on Notes. Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 9 may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Issuer or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Issuer, to any modification of this Indenture contained in any such supplemental indenture may, at the Issuer's expense, be prepared and executed by the Issuer, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 16.11 hereof) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 9.05 Evidence of Compliance of Supplemental Indenture to Be Furnished to Trustee. Prior to entering into any supplemental indenture pursuant to this Article 9, the Trustee shall be provided with an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 9 and is otherwise authorized or permitted by this Indenture.

ARTICLE 10
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 10.01 **Issuer May Consolidate on Certain Terms.** Nothing contained in this Indenture or in the Notes shall prevent any consolidation or merger of the Issuer with or into any other Person or Persons (whether or not affiliated with the Issuer), or successive consolidations or mergers in which either the Issuer will be the continuing entity or the Issuer or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance, transfer or lease of all or substantially all of the property of the Issuer and the Issuer's Subsidiaries, taken as a whole, to any other Person (whether or not affiliated with the Issuer); provided, however, that the following conditions are met:

- (a) the Issuer shall be the continuing entity, or the successor entity (if other than the Issuer) formed by or resulting from any consolidation or merger or which shall have received the transfer of assets shall be domiciled in the United States and shall expressly assume payment of the principal of and interest on all of the Notes and the due and punctual performance and observance of all of the covenants and conditions in this Indenture;
- (b) immediately after giving effect to such transaction, no Default and no Event of Default shall have occurred and be continuing; and
- (c) either the Issuer or the successor Person, in either case, shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article 10 and that all conditions precedent herein provided for relating to such transaction have been complied with.

No such consolidation, merger, sale, conveyance, transfer or lease shall be permitted by this Section 10.01 unless prior thereto the Issuer shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that the Issuer's obligations hereunder shall remain in full force and effect thereafter.

Section 10.02 **Issuer Successor to Be Substituted.** Upon any consolidation by the Issuer with or merger of the Issuer into any other Person or any sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Issuer to any Person in accordance with Section 10.01 hereof, the successor Person formed by such consolidation or into which the Issuer is merged or to which such sale, conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture with the same effect as if such successor Person had been named as the Issuer herein, and thereafter, except in the case of a lease, the predecessor Person shall be released and discharged from all obligations and covenants under this Indenture and the Notes.

In case of any such consolidation, merger, sale, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

ARTICLE 11
SATISFACTION AND DISCHARGE OF INDENTURE

Section 11.01 **Discharge of Indenture.** This Indenture shall be discharged and shall cease to be of further effect as to all outstanding Notes and the Guarantees (except as to any surviving rights as provided below), and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when (a) either: (1) all Notes theretofore authenticated and delivered (other than (i) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 11.04 hereof and (ii) Notes for whose payment monies have theretofore been deposited in trust and thereafter repaid to the Issuer as provided in Section 11.04 hereof) have been delivered to the Trustee for cancellation; or (2) all such Notes not theretofore delivered to the Trustee for cancellation (i) have become due and payable, whether at the Maturity Date, or otherwise, or (ii) are to be called for redemption under arrangements reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer, and the Issuer, in the case of clause (1) or (2) above, has irrevocably deposited or caused to be irrevocably deposited with the Trustee or a Paying Agent (other than the Issuer or any of its Affiliates), as applicable, as trust funds in trust cash in an amount sufficient to pay and discharge the entire indebtedness on such Notes not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of such deposit (in the case of Notes which have become due and payable) or to the Maturity Date or Redemption Date, as the case may be; (b) the Issuer has paid or caused to be paid all other sums payable hereunder by the Issuer; and (c) the Issuer has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Issuer to the Trustee under Section 7.06 hereof shall survive and, if monies shall have been deposited with the Trustee pursuant to subclause (2) of clause (a) of this Section 11.01, the provisions of Section 2.06, Section 2.07, Section 2.08 and Section 5.01 hereof and this Article 11, shall survive until the Notes have been paid in full.

Section 11.02 **Deposited Monies to Be Held in Trust by Trustee.** Subject to Section 11.04 hereof, all monies deposited with the Trustee pursuant to Section 7.05 hereof shall be held in trust for the sole benefit of the Noteholders, and such monies shall be applied by the Trustee to the payment, either directly or through any Paying Agent (including the Issuer if acting as its own Paying Agent), to the Holders of the particular Notes for the payment or redemption of which such monies have been deposited with the Trustee, of all sums due and to become due thereon for principal, premium, if any, and interest. The Trustee is not responsible to anyone for interest on any deposited funds except as agreed in writing.

Section 11.03 **Paying Agent to Repay Monies Held.** Subject to the provisions of Section 11.04 hereof, the Trustee or a Paying Agent shall hold in trust, for the benefit of the Noteholders, all monies deposited with it pursuant to Section 11.01 hereof and shall apply the deposited monies in accordance with this Indenture and the Notes to the payment of the principal of (including the Redemption Price upon redemption and payment of a Change of Control Offer on the Change of Control Payment Date, in each case, pursuant to Article 3 hereof) and interest and Additional Interest, if any, on the Notes.

Section 11.04 **Return of Unclaimed Monies.** The Trustee and each Paying Agent shall pay to the Issuer upon request any monies held by them for the payment of principal or interest that remains unclaimed for two years after a right to such monies have matured; provided, however, that the Trustee or such Paying Agent, before being required to make any such payment, may, at the expense of the Issuer, either publish in a newspaper of general circulation in The City of New York, or cause to be mailed (or sent by electronic transmission) to each Holder entitled to such monies, notice that such monies remain unclaimed and that after a date specified therein, which shall be at least thirty (30) calendar days from the date of such mailing or publication, any unclaimed balance of such monies then remaining will be repaid to the Issuer. After payment to the Issuer, Holders entitled to monies must look to the Issuer for payment as general creditors unless an applicable abandoned property law designates another person, and the Trustee and each Paying Agent shall be relieved of all liability with respect to such monies.

Section 11.05 **Reinstatement.** If the Trustee or the Paying Agent is unable to apply any monies in accordance with Section 11.02 hereof 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 this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.01 hereof until such time as the Trustee or the Paying Agent is permitted to apply all such monies in accordance with Section 11.02 hereof; provided, that if the Issuer makes any payment of principal of or interest on any Note following 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 monies held by the Trustee or Paying Agent.

ARTICLE 12 LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 12.01 **Option to Effect Legal Defeasance or Covenant Defeasance.** The Issuer may, at its option and at any time, elect to have either Section 12.02 or Section 12.03 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 12.

Section 12.02 **Legal Defeasance and Discharge.** Upon the Issuer's exercise under Section 12.01 hereof of the option applicable to this Section 12.02, the Issuer and each Guarantor will, subject to the satisfaction of the conditions set forth in Section 12.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes and the Guarantees on the date the conditions set forth below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Issuer and the Guarantors will be deemed to have paid and discharged the entire Debt represented by the outstanding Notes and Guarantees, which will thereafter be deemed to be "outstanding" only for the purposes of Section 12.05 hereof and the other sections of this Indenture referred to in clauses (a) and (b) below, and to have satisfied all their other obligations under such Notes, the Guarantees and this Indenture (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following provisions which will survive until otherwise terminated or discharged hereunder:

- (a) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium and Additional Interest, if any, on, such Notes when such payments are due from the trust referred to in Section 12.04 hereof;
- (b) the Issuer's obligations with respect to such Notes under Article 2 and Section 4.02 hereof;
- (c) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Issuer's obligations in connection therewith; and
- (d) this Article 12.

Subject to compliance with this Article 12, the Issuer may exercise its option under this Section 12.02 notwithstanding the prior exercise of its option under Section 12.03 hereof.

Section 12.03 **Covenant Defeasance.** Upon the Issuer's exercise under Section 12.01 hereof of the option applicable to this Section 12.03, the Issuer and each Guarantor will, subject to the satisfaction of the conditions set forth in Section 12.04 hereof, be released from each of their obligations under the covenants contained in Section 4.09, Section 4.10 and Section 4.11 hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 12.04 hereof are satisfied (hereinafter, "Covenant Defeasance"), and the Notes will thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes will not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and Guarantees, the Issuer and each Guarantor may omit to comply with and will have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and Guarantees will be unaffected thereby. In addition, upon the Issuer's exercise under Section 12.01 hereof of the option applicable to this Section 12.03, subject to the satisfaction of the conditions set forth in Section 12.04 hereof, Section 6.01(c) and Section 6.01(d) hereof will not constitute Events of Default.

Section 12.04 **Conditions to Legal or Covenant Defeasance.** In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 12.02 or Section 12.03 hereof:

- (a) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm, or firm of independent public accountants, to pay the principal of, premium and Additional Interest, if any, and interest on, the outstanding Notes on the stated date for payment thereof or on the applicable Redemption Date, as the case may be, and the Issuer must specify whether the Notes are being defeased to such stated date for payment or to a particular Redemption Date;

(b) in the case of an election under Section 12.02 hereof, the Issuer must deliver to the Trustee an Opinion of Counsel confirming that:

- (1) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling; or
- (2) since the date of this Indenture, there has been a change in the applicable United States federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the outstanding Notes will not recognize income, gain or loss for United States federal income tax purposes as a result of such Legal Defeasance and will be subject to United States federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of an election under Section 12.03 hereof, the Issuer must deliver to the Trustee an Opinion of Counsel confirming that the Holders of the outstanding Notes will not recognize income, gain or loss for United States federal income tax purposes as a result of such Covenant Defeasance and will be subject to United States federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit (and any similar concurrent deposit relating to other indebtedness being defeased, discharged or replaced), and the granting of liens to secure such borrowings);

(e) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture and the agreements governing any other indebtedness being defeased, discharged or replaced) to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound;

(f) the Issuer must deliver to the Trustee an Officers' Certificate stating that the deposit was not made by the Issuer with the intent of preferring the Holders of Notes over the other creditors of the Issuer with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuer or others; and

(g) the Issuer must deliver to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Section 12.05 Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions. Subject to Section 12.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 12.05, the "Trustee") pursuant to Section 12.04 hereof in respect of the outstanding Notes will be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium and Additional Interest, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuer will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 12.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Notwithstanding anything in this Article 12 to the contrary, the Trustee will deliver or pay to the Issuer from time to time upon the request of the Issuer any money or non-callable Government Securities held by it as provided in Section 12.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 12.04(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 12.06 **Repayment to Issuer.** Any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of, premium or Additional Interest, if any, or interest on, any Note and remaining unclaimed for two years after such principal, premium or Additional Interest, if any, or interest has become due and payable shall be paid to the Issuer on its request or (if then held by the Issuer) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to look only to the Issuer for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, will thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Issuer cause to be published once, in the New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Issuer.

Section 12.07 **Reinstatement.** If the Trustee or Paying Agent is unable to apply any U.S. dollars or non-callable Government Securities in accordance with Section 12.02 or Section 12.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuer's and each Guarantor's obligations under this Indenture and the Notes and the Guarantee will be revived and reinstated as though no deposit had occurred pursuant to Section 12.02 or Section 12.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 12.02 or Section 12.03 hereof, as the case may be; provided, however, that, if the Issuer makes any payment of principal of, premium or Additional Interest, if any, or interest on, any Note following the reinstatement of its obligations, the Issuer will be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 13 IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 13.01 **Indenture and Notes Solely Corporate Obligations.** Except as otherwise expressly provided in Article 15 hereof, no recourse for the payment of the principal of (including the Redemption Price upon redemption and payment of a Change of Control Offer on the Change of Control Payment Date, in each case, pursuant to Article 3 hereof) or, premium, if any, or interest and Additional Interest, if any, on any Note, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Issuer in this Indenture or in any supplemental indenture or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, limited partner, member, manager, employee, agent, officer, director or Subsidiary, as such, past, present or future, of the Issuer or any of the Issuer's Subsidiaries or of any successor thereto, either directly or through the Issuer or any of the Issuer's Subsidiaries or any successor thereto, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 14 MEETINGS OF HOLDERS OF NOTES

Section 14.01 **Purposes for Which Meetings May Be Called.** A meeting of Holders of Notes may be called at any time and from time to time pursuant to this Article 14 to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other act provided by this Indenture to be made, given or taken by Holders of Notes.

Section 14.02 **Call, Notice and Place of Meetings.**

(a) The Trustee may at any time call a meeting of Holders of Notes for any purpose specified in Section 14.01 hereof, to be held at such time and at such place in The City of New York, New York as the Trustee shall determine. Notice of every meeting of Holders of Notes, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 16.03 hereof, not less than twenty-one (21) nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Issuer or the Holders of at least 10% in principal amount of the outstanding Notes shall have requested the Trustee to call a meeting of the Holders of Notes for any purpose specified in Section 14.01 hereof, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed notice of or made the first publication of the notice of such meeting within twenty-one (21) days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Issuer or the Holders of Notes in the amount above specified, as the case may be, may determine the time and the place in the City of New York, New York, for such meeting and may call such meeting for such purposes by giving notice thereof as provided in clause (a) of this Section 14.02.

Section 14.03 **Persons Entitled to Vote at Meetings.** To be entitled to vote at any meeting of Holders of Notes, a Person shall be (a) a Holder of one or more outstanding Notes, or (b) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more outstanding Notes by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Notes shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Issuer and its counsel.

Section 14.04 **Quorum; Action.** The Persons entitled to vote a majority in principal amount of the outstanding Notes shall constitute a quorum for a meeting of Holders of Notes; provided, however, that if any action is to be taken at the meeting with respect to any request, demand, authorization, direction, notice, consent, waiver or other action which may be made, given or taken by the Holders of not less than a specified percentage in principal amount of the outstanding Notes, the Persons holding or representing the specified percentage in principal amount of the outstanding Notes will constitute a quorum. In the absence of a quorum within 30 minutes after the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Notes, be dissolved. In any other case the meeting may be adjourned for a period of not less than ten (10) days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than ten (10) days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 14.02 hereof, except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage, as provided above, of the principal amount of the outstanding Notes which shall constitute a quorum.

Except as limited by the proviso to Section 9.02 hereof, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of the Holders of a majority in principal amount of the outstanding Notes; provided, however, that, except as limited by the proviso to Section 9.02 hereof, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the outstanding Notes may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the outstanding Notes.

Any resolution passed or decision taken at any meeting of Holders of Notes duly held in accordance with this Section 14.04 shall be binding on all the Holders of Notes, whether or not such Holders were present or represented at the meeting.

Section 14.05 **Determination of Voting Rights; Conduct and Adjournment of Meetings.** Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Notes in regard to proof of the holding of Notes and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Notes shall be proved in the manner specified in Section 8.03 hereof and the appointment of any proxy shall be proved in the manner specified in Section 8.01 hereof.

(a) The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Issuer or by Holders of Notes as provided in Section 14.02(b) hereof, in which case the Issuer or the Holders of Notes calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the outstanding Notes of such series represented at the meeting.

(b) At any meeting, each Holder of a Note or proxy shall be entitled to one vote for each \$2,000 principal amount of Notes held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Note or proxy.

(c) Any meeting of Holders of Notes duly called pursuant to Section 14.02 hereof at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the outstanding Notes represented at the meeting; and the meeting may be held as so adjourned without further notice.

Section 14.06 Counting Votes and Recording Action of Meetings. The vote upon any resolution submitted to any meeting of Holders of Notes shall be by written ballots on which shall be subscribed the signatures of the Holders of Notes or of their representatives by proxy and the principal amounts and serial numbers of the outstanding Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record, at least in triplicate, of the proceedings of each meeting of Holders of Notes shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 14.02 hereof and, if applicable, Section 14.04 hereof. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Issuer, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

ARTICLE 15 GUARANTEE

Section 15.01 Guarantee. By its execution hereof, each Guarantor acknowledges and agrees that it receives substantial benefits from the Issuer and that such Guarantor is providing its Guarantee for good and valuable consideration, including, without limitation, such substantial benefits. Accordingly, subject to the provisions of this Article 15, each Guarantor hereby fully, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, jointly and severally with each other Guarantor, to each Holder of the Notes and, to the extent lawful, the Trustee: (i) the full and punctual payment when due, whether at the Maturity Date, upon acceleration, upon repurchase or redemption, upon a Change of Control Triggering Event or otherwise, of the principal of (including the Redemption Price upon redemption and payment of a Change of Control Offer on the Change of Control Payment Date, in each case pursuant to Article 3 hereof), premium, if any, and interest and Additional Interest, if any, on the Notes and all other obligations of the Issuer to the Holders or the Trustee hereunder or under the Notes (including fees, expenses or other (including, without limitation, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Issuer or any Guarantor whether or not a claim for post-filing or post-petition interest is allowed in such proceeding)); and (ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations (including compensation and indemnification obligations hereunder), the same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at the Maturity Date, by acceleration, call for redemption or otherwise, subject, however, in the case of clauses (i) and (ii) above, to the limitations set forth in Section 15.03 hereof (collectively, the “**Guarantee Obligations**”).

Subject to the provisions of this Article 15, each Guarantor hereby agrees that its Guarantee hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any thereof, the entry of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of such Guarantor. Each Guarantor hereby waives and relinquishes: (a) any right to require the Trustee, the Holders or the Issuer (each, a “**Benefited Party**”) to proceed against the Issuer or any other Person or to proceed against or exhaust any security held by a Benefited Party at any time or to pursue any other remedy in any secured party’s power before proceeding against such Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person or Persons or the failure of a Benefited Party to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other Person or Persons; (c) demand, protest and notice of any kind (except as expressly required by this Indenture), including but not limited to notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of such Guarantor, the Issuer, any Benefited Party, any creditor of such Guarantor or the Issuer or on the part of any other Person whomsoever in connection with any obligations the performance of which are hereby guaranteed; (d) any defense based upon an election of remedies by a Benefited Party, including but not limited to an election to proceed against such Guarantor for reimbursement; (e) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (f) any defense arising because of a Benefited Party’s election, in any proceeding instituted under the Bankruptcy Law, of the application of Section 11.11(b)(2) of the Bankruptcy Code; and (g) any defense based on any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. Each Guarantor hereby covenants that, except as otherwise provided therein, the Guarantee shall not be discharged except by payment in full of all Guarantee Obligations, including the principal, premium, if any, and interest on the Notes and all other costs provided for under this Indenture or as provided in Article 7 hereof.

If any Holder or the Trustee is required by any court or otherwise to return to either the Issuer or any Guarantor, or any trustee or similar official acting in relation to either the Issuer or any Guarantor, any amount paid by the Issuer or any Guarantor to the Trustee or such Holder, the Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect. Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any Guarantee Obligations hereby until payment in full of all such obligations guaranteed hereby. Each Guarantor agrees that, as between it, on the one hand, and the Holders of Notes and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes hereof, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guarantee Obligations, and (y) in the event of any acceleration of such obligations as provided in Article 6 hereof, such Guarantee Obligations (whether or not due and payable) shall forthwith become due and payable by such Guarantor for the purpose of the Guarantee.

Section 15.02 **Execution and Delivery of Guarantee.** To evidence the Guarantee set forth in Section 15.01 hereof, each Guarantor has executed this Indenture or a Guarantee in substantially the form of Exhibit D hereto. If an officer whose signature is on a Note, this Indenture or such a Guarantee no longer holds that office at the time the Trustee authenticates a Note to which the Guarantee applies, the Guarantee shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of each Guarantor.

Section 15.03 **Limitation of Guarantors’ Liability; Certain Bankruptcy Events.**

(a) Each Guarantor, and by its acceptance hereof each Holder, hereby confirms that it is the intention of all such parties that the Guarantee Obligations of such Guarantor pursuant to its Guarantee not constitute a fraudulent transfer or conveyance for purposes of any Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law. To effectuate the foregoing intention, the Holders and each Guarantor hereby irrevocably agree that the Guarantee Obligations of such Guarantor under this Article 15 shall be limited to the maximum amount as shall, after giving effect to all other contingent and fixed liabilities of such Guarantor, result in the Guarantee Obligations of such Guarantor under the Guarantee not constituting a fraudulent transfer or conveyance.

(b) Each Guarantor hereby covenants and agrees, to the fullest extent that it may do so under applicable law, that in the event of the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Issuer, such Guarantor shall not file (or join in any filing of), or otherwise seek to participate in the filing of, any motion or request seeking to stay or to prohibit (even temporarily) execution on the Guarantee and hereby waives and agrees not to take the benefit of any such stay of execution, whether under Section 362 or 105 of the Bankruptcy Law or otherwise.

Section 15.04 **Additional Guarantors; Release of Guarantors and Guarantee Obligations.**

(a) If the Issuer or any Guarantor acquires or creates a Subsidiary, other than an Immaterial Subsidiary, then such Subsidiary shall become a Guarantor and execute and deliver to the Trustee a Guarantee substantially in the form attached as Exhibit D hereto, and deliver to the Trustee (i) an Opinion of Counsel and (ii) an Officers' Certificate satisfying the requirements of this Indenture, in each case, within 45 days following the date on which it was acquired, created or otherwise became a Subsidiary (or, in each case, such longer period as may be required to obtain any necessary approvals under applicable laws or other regulatory requirements). The Issuer shall use commercially reasonable efforts to obtain all approvals necessary to permit any Subsidiary to become a Guarantor as required hereby as promptly as practicable, to the extent applicable.

(b) Notwithstanding any other provisions of this Indenture, unless otherwise already released in accordance with the terms of this Indenture, the Guarantee of each Guarantor shall be automatically released in connection with:

(1) any transaction that results in such Guarantor ceasing to be a Subsidiary of the Issuer; and

(2) any sale or other disposition of all or substantially all of the assets of such Guarantor, by way of merger, consolidation or otherwise, to a Person that is not (either immediately before or upon giving effect to such transaction) the Issuer or a Subsidiary of the Issuer.

(c) The Trustee shall deliver an appropriate instrument evidencing the release of any Guarantor from the Guarantee Obligations upon receipt of a written request of the Issuer accompanied by an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent to such release of Guarantor have been satisfied and that such release of Guarantor is authorized or permitted by the provisions of this Indenture.

ARTICLE 16
MISCELLANEOUS PROVISIONS

Section 16.01 **Provisions Binding on Issuer's and Guarantors' Successors.** All the covenants, stipulations, promises and agreements by the Issuer or any Guarantor contained in this Indenture shall bind their respective successors and assigns whether so expressed or not.

Section 16.02 **Official Acts by Successor Corporation.** Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Issuer or any Guarantor shall and may be done and performed with like force and effect by the like board, committee or officer of any Person that shall at the time be the lawful sole successor of the Issuer or such Guarantor.

Section 16.03 **Addresses for Notices, etc.** Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders of Notes on the Issuer or any Guarantor shall be in writing and shall be deemed to have been sufficiently given or made, for all purposes, if given by being deposited postage prepaid by registered or certified mail in a post office letter box, or sent by overnight courier, or sent by electronic mail in PDF format (if receipt of such transmission is confirmed by reply e-mail or telephonically), or sent by telecopier transmission addressed as follows:

To the Issuer:

AFC Gamma, Inc.
525 Okeechobee Blvd., Suite 1770
West Palm Beach, FL 33401
Attention: Gabriel Katz
Telephone No.: ***
Email: ***

With a copy to (which shall not constitute notice):

O'Melveny & Myers LLP
Times Square Tower 7 Times Square
New York, New York 10036
Attention: Jeeho M. Lee, Esq.
Telephone No.: ***
Email: ***

Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given by being deposited, postage prepaid, by registered or certified mail in a post office letter box, or sent by overnight courier, or sent by electronic mail in PDF format (if receipt of such transmission is confirmed by reply e-mail or telephonically), or sent by telecopier transmission addressed as follows:

TMI Trust Company
1100 Abernathy Road, Suite 480
Atlanta, GA 30328
Attention: Debra A. Schachel
Telephone No.: ***
Email: ***

With a copy to (which shall not constitute notice):

Perkins Coie LLP
1155 Avenue of the Americas, 22nd Floor
New York, NY 10036-2711
Attention: Ronald Sarubbi, Esq.
Telephone No.: ***
Email: ***

The Trustee, by notice to the Issuer, and the Issuer, by notice to the Trustee, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Noteholder shall be mailed by first class mail, postage prepaid, at such Noteholder's address as it appears on the Note Register or via DTC and shall be sufficiently given to such Noteholder if so mailed within the time prescribed.

Failure to mail a notice or communication to a Noteholder or any defect in it shall not affect its sufficiency with respect to other Noteholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

Section 16.04 Governing Law; Jury Trial Waiver; Consent to Jurisdiction.

(a) This Indenture shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflict of law principles that would result in the application of any laws other than the laws of the State of New York.

(b) EACH PARTY HERETO HEREBY 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 INDENTURE, ANY NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY 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 BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(c) Each of the parties hereby irrevocably and unconditionally submits, for itself and its property, to the jurisdiction of the Supreme Court 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 Indenture and any of the Notes, or for recognition or enforcement of any judgment, and each of the parties hereto hereby 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 or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by 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 Indenture shall affect any right that the Trustee (in each of its various capacities as designated from time to time hereunder) or any Holder may have to bring any action or proceeding relating to this Indenture against the Issuer or any Guarantor or their properties in the courts of any jurisdiction to enforce any judgment, order or process entered by such courts situate within the State of New York, or to enjoin any violations hereof or for relief ancillary hereto or otherwise to collect on loans or enforce the payment of any Notes or to enforce, protect or maintain their rights and claims or for any other lawful purpose. The Issuer and each Guarantor further agree that any action or proceeding brought against the Trustee (in each of its various capacities as designated from time to time hereunder) if brought by the Issuer or any Guarantor, shall be brought only in New York State or, to the extent permitted by law, in such Federal Court.

Section 16.05 **Evidence of Compliance with Conditions Precedent, Certificates to Trustee.** Upon any application or demand by the Issuer to the Trustee to take any action under any of the provisions of this Indenture, the Issuer shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and, if requested by the Trustee, an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include: (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statement or opinion contained in such certificate or opinion is based; (3) a statement that, in the opinion of such person, such person has made such examination or investigation as is necessary to enable such person to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with; provided, however, that with respect to matters of fact an Opinion of Counsel may rely on an Officers' Certificate or certificates of public officials.

Section 16.06 **Legal Holidays.** In any case in which the Stated Maturity of interest on or principal of the Notes, the Redemption Date or the Change of Control Payment Date of any Note will not be a Business Day, then payment of such interest on or principal of the Notes need not be made on such date, but shall be due on the next succeeding Business Day with the same force and effect as if made on the Stated Maturity, the Redemption Date or the Change of Control Payment Date, and no interest shall accrue for the period from and after such date.

Section 16.07 **No Incorporation by Reference to Trust Indenture Act.** This Indenture is not qualified under the Trust Indenture Act, and the Trust Indenture Act shall not apply to or in any way govern the terms of this Indenture. As a result, no provisions of the Trust Indenture Act are incorporated into this Indenture unless expressly incorporated pursuant to this Indenture..

Section 16.08 **No Security Interest Created.** Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction in which property of the Issuer or the Issuer's Subsidiaries is located.

Section 16.09 **Benefits of Indenture.** Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any authenticating agent, any Note Registrar and their successors hereunder and the Holders of Notes any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 16.10 **Table of Contents, Headings, etc.** The table of contents and the titles and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 16.11 **Authenticating Agent.** The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf, and subject to its direction, in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Section 2.04, Section 2.06, Section 2.07, Section 2.08 and Section 3.03 hereof, as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes "by the Trustee" and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee's certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 7.09 hereof.

Any corporation into which any authenticating agent may be merged or exchanged or with which it may be consolidated, or any corporation resulting from any merger, consolidation or exchange to which any authenticating agent shall be a party, or any corporation succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation is otherwise eligible under this Section 16.11, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Issuer. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Issuer. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section 16.11, the Trustee shall either promptly appoint a successor authenticating agent or itself assume the duties and obligations of the former authenticating agent under this Indenture and, upon such appointment of a successor authenticating agent, if made, shall give written notice of such appointment of a successor authenticating agent to the Issuer and shall mail notice of such appointment of a successor authenticating agent to all Holders of Notes as the names and addresses of such Holders appear on the Note Register.

The Issuer agrees to pay to the authenticating agent from time to time such reasonable compensation for its services as shall be agreed upon in writing between the Issuer and the authenticating agent.

The provisions of Section 7.02, Section 7.03, Section 7.04 and Section 8.03 hereof and this Section 16.11 shall be applicable to any authenticating agent.

Section 16.12 **Execution in Counterparts.** This Indenture may be executed in any number of counterparts, including in electronic .pdf format, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Indenture by facsimile or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Indenture.

The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Indenture or any document to be signed in connection with this Indenture (including, without limitation, the Notes, the Guarantee and any Officers’ Certificate) shall be deemed to include electronic signatures, including without limitation, digital signature provided by DocuSign (or such other digital signature provider as specified in writing to Trustee by the authorized representative), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature. The Issuer agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to Trustee, including without limitation the risk of Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 16.13 **Severability.** In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. TMI Trust Company hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions herein above set forth.

Section 16.14 **USA 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 request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed.

AFC GAMMA, INC., as Issuer

By: /s/ Jonathan Kalikow

Name: Jonathan Kalikow

Title: Head of Real Estate

TMI TRUST COMPANY, as Trustee

By: /s/ Debra A. Schachel

Name: Debra A. Schachel

Title: Vice President

[SIGNATURE PAGE TO INDENTURE]

EXHIBIT A

[Include only for Global Notes]

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 2.06 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.09 OF THE INDENTURE AND (4) 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 DEPOSITARY 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 (55 WATER STREET, NEW YORK, NEW YORK) (“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.

[Include only for Restricted Global Notes and Restricted Definitive Notes]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE “RESALE RESTRICTION TERMINATION DATE”) THAT IS THE LATER OF (I)[*IN THE CASE OF RULE 144A NOTES*: ONE YEAR AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF, THE ORIGINAL ISSUE DATE OF THE ISSUANCE OF ANY ADDITIONAL NOTES AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 OR ANY SUCCESSOR PROVISION THERETO][*IN THE CASE OF REGULATION S NOTES*: 40 DAYS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF, THE ORIGINAL ISSUE DATE OF THE ISSUANCE OF ANY ADDITIONAL NOTES AND THE DATE ON WHICH THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) WAS FIRST OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN RULE 902 OF REGULATION S) IN RELIANCE ON REGULATION S] AND (II) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, ONLY (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”), TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER’S AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. [*IN THE CASE OF REGULATION S NOTES*: BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT.]

[Include only for Notes issued with “original issue discount” for U.S. federal income tax purposes]

THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR U.S. FEDERAL INCOME TAX PURPOSES. FOR FURTHER INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, THE ISSUE DATE AND THE YIELD TO MATURITY OF THIS NOTE, THE HOLDER OF THIS NOTE SHOULD CONTACT THE OFFICE OF THE DIRECTOR OF LEGAL OF AFC GAMMA, INC. AT 525 OKEECHOBEE BLVD., SUITE 1770, WEST PALM BEACH, FL 33401, WHO WILL PROMPTLY MAKE SUCH INFORMATION AVAILABLE.”

[Include for all Notes]

BY ITS ACQUISITION OF THIS SECURITY, THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (1) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE OR HOLD THIS SECURITY CONSTITUTES THE ASSETS OF (A) AN “EMPLOYEE BENEFIT PLAN” (AS DEFINED IN SECTION 3(3) OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”)) THAT IS SUBJECT TO TITLE I OF ERISA, (B) A “PLAN”, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”) OR SIMILAR PROVISIONS UNDER ANY OTHER U.S. OR NON-U.S. FEDERAL, STATE, LOCAL OR OTHER LAWS OR REGULATIONS (“SIMILAR LAWS”), OR (C) AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE “PLAN ASSETS” OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, OR (2) THE ACQUISITION, HOLDING AND DISPOSITION OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAWS.

AFC GAMMA, INC.
5.750% Senior Notes due 2027

No. _____

CUSIP No.: [____]

ISIN: [____]

[\$●]

AFC Gamma, Inc., a Maryland corporation (herein called the “**Issuer**,” which term includes any successor entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to Cede & Co., or its registered assigns, the principal sum of [●] dollars (\$[●]), or such lesser amount as is set forth in the [Schedule of Increases or Decreases In Note][Schedule of Exchanges of Interests in the Global Note] on the other side of this Note, on May 1, 2027 at the office or agency of the Issuer maintained for that purpose in accordance with the terms of the Indenture, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and to pay interest, semi-annually on May 1 and November 1 of each year, commencing May 1, 2022, on said principal sum at said office or agency, in like coin or currency, at the rate per annum of 5.750%, from the May 1 or November 1, as the case may be, next preceding the date of this Note to which interest has been paid or duly provided for, unless no interest has been paid or duly provided for on the Notes, in which case from November 3, 2021 until payment of said principal sum has been made or duly provided for. The Issuer shall pay interest on any Notes in certificated form by check mailed to the address of the Person entitled thereto as it appears in the Note Register; provided, however, that a Holder of any Notes in certificated form in the aggregate principal amount of more than \$2.0 million may specify by written notice to the Issuer that it pay interest by wire transfer of immediately available funds to the account specified by the Noteholder in such notice, or on any Global Note by wire transfer of immediately available funds to the account of the Depository or its nominee.

Reference is made to the further provisions of this Note set forth on the reverse hereof and the Indenture governing this Note. 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 signed manually or by facsimile or other electronic imaging means 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.

DATED:

AFC GAMMA, INC.

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

DATED:

TMI TRUST COMPANY, as Trustee

By: _____
Authorized Signatory

[FORM OF REVERSE SIDE OF NOTE]

AFC Gamma, Inc.
5.750% Senior Notes due 2027

This Note is one of a duly authorized issue of Notes of the Issuer, designated as its 5.750% Senior Notes due 2027 (herein called the “Notes”), issued under and pursuant to an Indenture dated as of November 3, 2021 (herein called the “Indenture”), among the Issuer and TMI Trust Company, as trustee (herein called the “Trustee”), to which Indenture and any indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Issuer, the Guarantors (if any) and the Holders of the Notes. Defined terms used but not otherwise defined in this Note shall have the respective meanings ascribed thereto in the Indenture.

The Holders shall be entitled to receive additional interest in certain circumstances, all as set forth in the Indenture.

If an Event of Default (other than an Event of Default specified in Section 6.01(e), 6.01(f) or 6.01(g) with respect to the Issuer) occurs and is continuing, the principal of, premium, if any, and accrued and unpaid interest on all Notes may be declared to be due and payable by either the Trustee or the Holders of at least twenty five percent (25 %) in aggregate principal amount of the Notes then outstanding, and, upon said declaration the same shall be immediately due and payable. If an Event of Default specified in Section 6.01(e), 6.01(f) or 6.01(g) of the Indenture occurs with respect to the Issuer, the principal of and premium, if any, and interest accrued and unpaid on all the Notes shall be immediately and automatically due and payable without necessity of further action.

The Indenture contains provisions permitting the Issuer and the Trustee, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, to execute supplemental indentures adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or modifying in any manner the rights of the Holders of the Notes, subject to exceptions set forth in Section 9.02 of the Indenture. Subject to the provisions of the Indenture, the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding may, on behalf of the Holders of all of the Notes, waive any past Default or Event of Default, subject to exceptions set forth in the Indenture.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall impair, as among the Issuer and the Holder of the Notes, the obligation of the Issuer, which is absolute and unconditional, to pay the principal of, premium, if any, on and interest on this Note at the place, at the respective times, at the rate and in the coin or currency herein and in the Indenture prescribed.

Interest on the Notes shall be computed on the basis of a 360-day year of twelve (12) 30-day months.

The Notes are issuable in fully registered form, without coupons, in denominations of \$2,000 principal amount and any multiple of \$1,000. At the office or agency of the Issuer referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, without payment of any service charge but with payment of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in connection with any registration or exchange of Notes, Notes may be exchanged for a like aggregate principal amount of Notes of any other authorized denominations.

The Issuer shall have the right to redeem the Notes under certain circumstances as set forth in Sections 3.01, 3.02 and 3.03 of the Indenture.

The Notes are not subject to redemption through the operation of any sinking fund.

Except as expressly provided in Article 15 of the Indenture, no recourse for the payment of the principal of or any premium or interest on this Note, or for any claim based hereon or otherwise in respect hereof, and no recourse under or upon any obligation, covenant or agreement of the Issuer in the Indenture or any supplemental indenture or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, limited partner, member, manager, employee, agent, officer, director or subsidiary, as such, past, present or future, of the Issuer or any of the Issuer's Subsidiaries or of any successor thereto, either directly or through the Issuer or any of the Issuer's subsidiaries or of any successor thereto, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as consideration for, the execution of the Indenture and the issue of this Note.

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to:

(Insert assignee's legal name)

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____
to transfer this Note on the books of the Issuer. The agent may substitute another to act for him.

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE *

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global Note or Definitive Note for an interest in this Global Note, have been made:

Date of exchange	Amount of decrease in Principal Amount at maturity of this Global Note	Amount of increase in Principal Amount at maturity of this Global Note	Principal amount at maturity of this Global Note following such decrease (or increase)	Signature of authorized officer of Trustee or Custodian

* This schedule should be included only if the Note is issued in global form.

EXHIBIT B

FORM OF CERTIFICATE OF TRANSFER

AFC Gamma, Inc.
525 Okeechobee Blvd., Suite 1770
West Palm Beach, FL 33401
Attention: Gabriel Katz

TMI Trust Company
1100 Abernathy Road, Suite 480
Atlanta, GA 30328
Telephone No.: [____]
Attention: [____]

Re: 5.750% Senior Notes due 2027

Reference is hereby made to the Indenture, dated as of November 3, 2021 (the “**Indenture**”), among AFC Gamma, Inc., as issuer (the “**Issuer**”), the guarantors party thereto (if any) and TMI Trust Company, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____ (the “**Transferor**”) owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of \$ _____ in such Note[s] or interests (the “**Transfer**”), to _____ (the “**Transferee**”), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. **Check if Transferee will take delivery of a beneficial interest in the Rule 144A Global Note or a Restricted Definitive Note pursuant to Rule 144A.** The Transfer is being effected pursuant to and in accordance with Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a “qualified institutional buyer” within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A, and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States and other jurisdictions. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Rule 144A Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

2. **Check if Transferee will take delivery of a beneficial interest in the Regulation S Global Note or a Restricted Definitive Note pursuant to Regulation S.** The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a Person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser) and the interest transferred will be held immediately thereafter through Euroclear or Clearstream. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

3. **Check and complete if Transferee will take delivery of a beneficial interest in a Restricted Global Note or a Restricted Definitive Note pursuant to any provision of the Securities Act other than Rule 144A or Regulation S.** The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) such Transfer is being effected to the Issuer or a Subsidiary thereof;

or

(c) such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act;

or

(d) such Transfer is being effected pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144, Rule 903 or Rule 904, and the Transferor hereby certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in compliance with the Securities Act. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Note and/or the Restricted Definitive Notes and in the Indenture and the Securities Act.

4. **Check if Transferee will take delivery of a beneficial interest in an Unrestricted Global Note or of an Unrestricted Definitive Note.**

(a) **Check if Transfer is pursuant to Rule 144.** (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) **Check if Transfer is Pursuant to Regulation S.** (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) **Check if Transfer is Pursuant to Other Exemption or Registration.** (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States or pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuer.

[Insert Name of Transferor]

By: _____

Name:

Title:

Dated: _____

ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

- (a) a beneficial interest in:
 - (i) the Rule 144A Global Note (CUSIP_____), or
 - (ii) the Regulation S Global Note (CUSIP_____), or
- (b) a Restricted Definitive Note.

After the Transfer, the Transferee will hold:

[CHECK ONE OF (a), (b) OR (c)]

- (a) a beneficial interest in the:
 - (i) Rule 144A Global Note (CUSIP_____), or
 - (ii) Regulation S Global Note (CUSIP_____), or
 - (iii) Unrestricted Global Note (CUSIP_____); or
- (b) a Restricted Definitive Note; or
- (c) an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE

AFC Gamma, Inc.
525 Okeechobee Blvd., Suite 1770
West Palm Beach, FL 33401
Attention: Gabriel Katz

TMI Trust Company
1100 Abernathy Road, Suite 480
Atlanta, GA 30328
Telephone No.: [____]
Attention: [____]

Re: 5.750% Senior Notes due 2027

Reference is hereby made to the Indenture, dated as of November 3, 2021 (the “**Indenture**”), among AFC Gamma, Inc., as issuer (the “**Issuer**”), the guarantors party thereto (if any) and TMI Trust Company, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____, (the “**Owner**”) owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of \$ _____ in such Note[s] or interests (the “**Exchange**”). In connection with the Exchange, the Owner hereby certifies that:

1. Exchange of Restricted Definitive Notes or Beneficial Interests in a Restricted Global Note for Unrestricted Definitive Notes or Beneficial Interests in an Unrestricted Global Note

(a) **Check if Exchange is from beneficial interest in a Restricted Global Note to beneficial interest in an Unrestricted Global Note.** In connection with the Exchange of the Owner’s beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the Securities Act of 1933, as amended (the “**Securities Act**”), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States and other jurisdictions.

(b) **Check if Exchange is from beneficial interest in a Restricted Global Note to Unrestricted Definitive Note.** In connection with the Exchange of the Owner’s beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(c) **Check if Exchange is from Restricted Definitive Note to beneficial interest in an Unrestricted Global Note.** In connection with the Owner’s Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(d) **Check if Exchange is from Restricted Definitive Note to Unrestricted Definitive Note.** In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2. Exchange of Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes

(a) **Check if Exchange is from beneficial interest in a Restricted Global Note to Restricted Definitive Note.** In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

(b) **Check if Exchange is from Restricted Definitive Note to beneficial interest in a Restricted Global Note.** In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the [CHECK ONE] Rule 144A Global Note, Regulation S Global Note, with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States and other jurisdictions. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Companies.

[Insert Name of Transferor]

By: _____

Name: _____

Title: _____

Dated: _____

EXHIBIT D

FORM OF GUARANTEE

Each Guarantor listed below (hereinafter referred to as the “**Guarantors**” which term includes any successors or assigns under the Indenture, dated the date hereof, among the Guarantors, the Issuer (as defined below) and TMI Trust Company, as trustee (the “**Indenture**”), unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, jointly and severally with each other Guarantor and each other guarantor party to the Indenture, the Guarantee Obligations (as defined in Section 15.01 of the Indenture), which include: (i) the full and punctual payment when due, whether at the Maturity Date, upon acceleration, upon repurchase or redemption, upon a Change of Control Triggering Event or otherwise, of the principal of (including the Redemption Price upon redemption and payment of a Change of Control Offer on the Change of Control Payment Date, in each case pursuant to Article 3 of the Indenture), premium, if any, and interest and Additional Interest, if any, on the 5.750% Senior Notes due 2027 (the “**Notes**”) of AFC Gamma, Inc., a Maryland corporation (the “**Issuer**”), and all other obligations of the Issuer to the Holders or the Trustee under the Indenture or under the Notes (including fees, expenses or other (including, without limitation, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Issuer or any Guarantor whether or not a claim for post-filing or post-petition interest is allowed in such proceeding)); and (ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, the same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at the Maturity Date, by acceleration, call for redemption or otherwise, subject, however, in the case of clauses (i) and (ii) above, to the limitations set forth in Section 15.03 of the Indenture.

The obligations of each Guarantor to the Holders of the Notes and to the Trustee pursuant to this Guarantee and the Indenture are expressly set forth in Article 15 of the Indenture and reference is hereby made to such Indenture for the precise terms of this Guarantee.

No past, present or future director, officer, employee, incorporator or stockholder (direct or indirect) of any Guarantor (or any such successor entity), as such, shall have any liability for any obligations of such Guarantor under this Guarantee or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation.

Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of merger or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, the benefit of discussion, protest or notice with respect to the Notes and all demands whatsoever.

This is a continuing Guarantee and shall remain in full force and effect and shall be binding upon each Guarantor and its successors and assigns until full and final payment of all of the Issuer’s obligations under the Notes and Indenture or until legally discharged in accordance with the Indenture and shall inure to the benefit of the successors and assigns of the Trustee and the Holders of the Notes, and, in the event of any transfer or assignment of rights by any Holder of the Notes or the Trustee, the rights and privileges herein conferred upon that party shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. This is a Guarantee of payment and performance and not of collectability.

This Guarantee shall not be valid or obligatory for any purpose until the certificate of authentication on the Note upon which this Guarantee is noted shall have been signed, in the name and on behalf of the Trustee under the Indenture, manually or by facsimile or other electronic imaging means by one of the authorized officers of the Trustee under the Indenture.

The obligations of each Guarantor under this Guarantee shall be limited to the extent necessary to insure that it does not constitute a fraudulent conveyance under applicable law.

THE TERMS OF ARTICLE 15 OF THE INDENTURE ARE INCORPORATED HEREIN BY REFERENCE.

Capitalized terms used herein have the same meanings given in the Indenture unless otherwise indicated.

IN WITNESS WHEREOF, each Guarantor has caused this instrument to be duly executed.

Dated: _____, 20[]

[GUARANTOR SIGNATURE BLOCK(S)]

D-2

SECOND AMENDMENT TO REVOLVING CREDIT AGREEMENT

This Second Amendment to Revolving Credit Agreement (the “**Amendment**”) is dated as of November 3, 2021, by and among AFC Gamma, Inc., a Maryland corporation (the “**Borrower**”), the Lenders identified on the signature page hereof (such Lenders, together with their respective successors and assigns, are referred to hereinafter each individually as a “**Lender**” and collectively as the “**Lenders**”), and AFC Finance, LLC, a Delaware limited liability company, as agent for the Lenders (in such capacity, together with its successor and assigns in such capacity, the “**Agent**”).

RECITALS

A. WHEREAS, the Borrower, the Agent and certain lenders party thereto are parties to that certain Secured Revolving Credit Agreement, dated as of August 18, 2020, as amended by that certain Amendment to Revolving Credit Agreement, dated as of May 7, 2021 (as amended, restated or otherwise modified from time to time, the “**Credit Agreement**”);

B. WHEREAS, the Borrower has requested, and the Agent and Lenders have agreed, to modify the Credit Agreement, as set forth herein, subject to the terms and conditions set forth herein below. All capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Credit Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following:

1. Amendments.

(a) Section 1.1 of the Credit Agreement is hereby amended by amending and restating the below defined terms in appropriate alphabetical order:

“**Loan Interest Rate**” shall mean, with respect to any Loan, 4.75% per annum, payable in cash in arrears as provided herein.

“**Maturity Date**” shall mean the earlier of (i) September 30, 2022, and (ii) the date of the closing of any Refinancing Credit Facility.

(b) Section 1.1 of the Credit Agreement is hereby amended by adding the following defined terms in the appropriate alphabetical order:

“**Commencement Date**” shall have the meaning specified therefor in Section 9.1(b).

“**Commitment Fee**” shall have the meaning specified therefor in Section 2.8(b).

“**Indenture**” shall mean that certain Indenture, dated as of November 3, 2021, by and among AFC Gamma, Inc., a Maryland corporation, the certain subsidiary guarantors from time to time party thereto and Indenture Trustee, as amended, restated or otherwise modified from time to time.

“**Indenture Holder**” and “**Indenture Holders**” shall mean those certain holders of the Indenture Notes.

“**Indenture Notes**” means the Notes (as defined in the Indenture).

“**Indenture Trustee**” shall mean TMI Trust Company, and its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at the time serving as successor trustee hereunder as trustee under the Indenture.

“**Loan Commitment**” shall mean (a) as to any Lender, the aggregate commitment of such Lender to make Loans as set forth on Annex A hereto or in the most recent assignment agreement to which it is a party (as adjusted to reflect any assignments as permitted hereunder) and (b) as to all Lenders, the aggregate commitment of all Lenders to make Loans, which aggregate commitment shall be Seventy Five Million Dollars (\$75,000,000) on the Effective Date, as such amount may be adjusted, if at all, from time to time in accordance with this Agreement.

“**Option**” shall have the meaning specified therefor in Section 9.1(a).

“**Option Notice**” shall have the meaning specified therefor in Section 9.1(c).

“**Option Term**” shall have the meaning specified therefor in Section 9.1(b).

“**Purchase Agreement**” shall have the meaning specified therefor in Section 9.2.

“**Purchase Agreement Termination Date**” shall have the meaning specified therefor in Section 9.2.

“**Purchase Price**” shall have the meaning specified therefor in Section 9.3.

“**Second Amendment Closing Date**” shall mean November 3, 2021.

“**Termination Date**” shall have the meaning specified therefor in Section 9.1(b).

“**Undersubscription Notice**” shall have the meaning specified therefor in Section 9.1(d).

“**Unused Fee**” shall have the meaning specified therefor in Section 2.8(a).

(c) Article II of the Credit Agreement is hereby amended by deleting Section 2.8 in its entirety and replacing the following therefor:

“**Section 2.8** Fees.

(a) Unused Fee. Beginning on the Second Amendment Closing Date, the Borrower shall pay to the Agent an unused line fee (“**Unused Fee**”) in the amount equal to 0.25% per annum of the sum of (i) \$75,000,000 minus (ii) the sum of the daily average principal amount of the Outstanding Amount for the preceding quarter, if said result is a positive number. The Unused Fee shall be paid by the Borrower quarterly in arrears on the first Business Day of each quarter in accordance with Section 2.9(a).

(b) Commitment Fee. The Borrower shall pay to the Agent a commitment fee (“**Commitment Fee**”) in the amount equal to 0.25% of the aggregate Loan Commitment as of the Second Amendment Closing Date, payable in three equal quarterly installments on the first Business Day of each such consecutive quarter, with the first such payment due on January 3, 2022, in each case, in accordance with Section 2.9(a).

(d) Section 2.9(a) of the Credit Agreement is hereby amended by adding the following sentence at the end thereof:

“All payments of interest, the Commitment Fee and Unused Fee are to be paid by the Borrower directly or indirectly through the Agent (and so long as such payments by the Agent occur promptly after the receipt thereof) to a charitable foundation to be designated by Agent in its sole discretion, net of any Taxes attributable to a Lender with respect thereof.”

(e) Section 2.9(b)(1) of the Credit Agreement is hereby amended by deleting the first sentence of Section 2.9(b)(1) in its entirety and replacing the following therefor:

“(1) So long as no Application Event has occurred and is continuing, all principal payments made by the Borrower shall be paid ratably to the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and all payments of fees and expenses made by the Borrower (other than fees or expenses that are for Agent’s separate account, which fees and expenses shall be paid to Agent or fees and expenses to be paid as set forth in Section 2.9(a), which fees and expenses shall be paid in accordance with Section 2.9(a)) shall be paid ratably to each Lender according to such Lender’s Pro Rata Share of the type of commitment or Obligation to which a particular fee or expense relates.”

(f) Section 7.2 of the Credit Agreement is hereby amended by adding the following subsection (c) at the end thereof:

“Notwithstanding anything herein to the contrary, no amendment, waiver, modification or consent shall amend, modify, waive or terminate, any provision of Article IX without the written consent of the Agent, the Borrower, the Required Lenders and the Indenture Holders holding a majority of outstanding amount of the Indenture Notes.”

(g) The Credit Agreement is hereby amended by adding the following Article IX at the end thereof:

**“ARTICLE IX
PURCHASE OPTION**

Section 9.1 Option to Purchase Loans.

(a) Grant of Option. The Lenders hereby grant to each Indenture Holder as of the Commencement Date the option (the “**Option**”) to purchase the Loans on a pro rata basis according to such Indenture Holder’s percentage holdings of the aggregate outstanding amount of the Indenture Notes for the “Purchase Price” described below and upon the other terms and conditions set forth in this Article IX.

(b) Term of Option. The Indenture Holders’ right to exercise the Option shall commence on 5:00 p.m. New York time on the thirtieth (30th) day following the occurrence of an Event of Default arising under Section 6.1(a) or Section 6.1(e) of this Agreement, if, on such thirtieth (30th) day, such Event of Default remains uncured (such date of commencement, the “**Commencement Date**”). No Event of Default shall be deemed cured unless, in addition to paying or causing the payment of such amounts as are owing under this Agreement or curing or causing the cure of such conditions as are required to cure the Event of Default, the Borrower pays or causes the payment of all late charges, default interest and amounts owing under the Loan Documents. The Option and all of the Indenture Holders’ rights to purchase the Loans shall automatically and without any notice terminate upon the earliest to occur of: (i) the date on which the Borrower repays the Loans in full, including all principal, interest, and fees (including any refinancing thereof), (ii) the repurchase or repayment in full of the Indenture Notes in accordance with the terms of the Indenture, and (iii) the date on which there are no longer any Indenture Notes held by a non-affiliate of the Company outstanding. The date on which the Option may terminate as set forth in the preceding sentence is referred to as the “**Termination Date**,” after which time the Option shall be automatically expired and of no further force or effect. The period commencing on the Commencement Date and ending on the Termination Date is referred to as the “**Option Term**.”

(c) Exercise of Option. If an Indenture Holder elects to exercise the Option, such Indenture Holder shall provide written notice thereof to the Agent and the Lenders in accordance with Section 7.1 of this Agreement within thirty (30) days after the Commencement Date (the “**Indenture Holder Notice Period**”); provided that any such written notice by an Indenture Holder electing to exercise the Option must be made prior to the expiration of the Option Term (the “**Option Notice**”). For the avoidance of doubt, the Option may only be exercised by Indenture Holders holding Indenture Notes as of the date the Option Notice is delivered.

(d) Undersubscription. If the Option has been exercised by certain of the Indenture Holders with respect to some but not all of the Loans outstanding as of the delivery of the Option Notice, then the Agent shall, immediately after the expiration of the Indenture Holder Notice Period, send written notice (the “**Undersubscription Notice**”) to those Indenture Holders who delivered an Option Notice within the Indenture Holder Notice Period. Each such Indenture Holder shall, subject to the provisions of this Section 9.1(d), have an additional option to purchase all or any part of the outstanding balance of the Loans. To exercise such option, such Indenture Holder shall provide written notice thereof to the Agent and the Lenders within ten (10) days after the expiration of the Indenture Holder Notice Period. To the extent any Indenture Holders choose to exercise the last-mentioned option for the outstanding balance of the Loans, the remaining balance of the Loans available for purchase under this Section 9.1(d) shall be allocated to each such Indenture Holder on a pro rata basis according to the amount of the Loans purchased by any such Indenture Holder relative the aggregate amount of the Loans purchased by all such Indenture Holders, in each case, pursuant to the Option.

Section 9.2 Purchase Terms. Within thirty (30) days after the Agent’s receipt of the Option Notice (such date, the “**Purchase Agreement Termination Date**”), the Indenture Holders, the Borrower, the Lenders and the Agent will use commercially reasonable efforts to negotiate in good faith a form of purchase agreement (the “**Purchase Agreement**”) with such other terms and conditions as are customary for transactions of the type contemplated by this Agreement. Once the final form of the Purchase Agreement is mutually agreed, the Borrowers, the Indenture Holders, the Lenders and the Agent shall confirm such agreement in writing. For the avoidance of doubt, the Indenture Holders’ agreement to the form of Purchase Agreement shall not obligate the Indenture Holders to exercise the Option. In the event the Borrowers, the Indenture Holders, the Lenders and the Agent do not mutually agree in writing upon a final form of the Purchase Agreement on or prior to the Purchase Agreement Termination Date (unless such date is extended by the mutual agreement of the parties), the Indenture Holders’ shall not be entitled to exercise the Option (but the other rights and obligations of the parties under this Agreement shall continue in accordance with their terms).

Section 9.3 Purchase Price. The purchase price for the Loans (the “**Purchase Price**”) shall be the amount which, on the closing date of the Purchase Agreement, would be necessary, taking into account all optional reductions of the Loan made pursuant to Section 2.3 and prepayments of the Loans made pursuant to Section 2.5, to wholly repay to the Lenders the Outstanding Amount, plus any accrued and unpaid interest and any other Obligations incurred by the Borrower and owing under the Loan Documents.

Section 9.4 Manner of Payment. The Purchase Price and all other sums required to be delivered by the Indenture Holders hereunder shall be delivered to the Lenders in cash or other immediately available funds.

Section 9.5 Exclusive Right to Purchase. The Borrower shall not sell or transfer the Loans to any other party on or before the Termination Date without also transferring its obligation under the Option.

Section 9.6 Third Party Beneficiaries. At any time prior to the Termination Date, the Indenture Holders and the Indenture Trustee shall be a third party beneficiaries of this Article IX and entitled to enforce the terms of this Article IX.”

(h) Annex A to the Credit Agreement is amended by amending and restating the Loan Commitment table set forth therein with the following:

Lender	Loan Commitment
AFC FINANCE, LLC	\$75,000,000
TOTAL	\$75,000,000

3. Ratification of Loan Documents and Collateral. The Borrower hereby ratifies and affirms each of the Loan Documents, as amended hereby, and agrees to perform each obligation set forth in each of the Loan Documents, as amended hereby. Except as specifically modified and amended herein, all terms, warranties, representations, conditions and covenants contained in the Credit Agreement and the other Loan Documents shall remain in full force and effect. Any property or rights to or interests in property granted as security in the Loan Documents shall remain as security for the Loan and the obligations of Borrower in the Loan Documents.

4. Representations and Warranties. The Borrower represents and warrants to the Lenders and the Agent that (a) the representations and warranties set forth in Article IV of the Credit Agreement, and in each of the other Loan Documents, are true and complete in all material respects (provided 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) on the date hereof as if made on and as of the date hereof (or, if any such representation or warranty is expressly stated to have been made as of a specific date, such representation or warranty shall be true and correct in all material respects as of such specific date), and as if each reference in said Article IV to “this Agreement” included reference to this Amendment and (b) no Default or Event of Default has occurred and is continuing.

5. Miscellaneous.

(a) The Loan Documents as modified herein contain the entire understanding and agreement of the Borrower, Agent and the Lender with respect to the Loan and supersede all prior representations, warranties, agreements, arrangements, and understandings. No provision of the Loan Documents as modified may be changed, discharged, supplemented, terminated, or waived except in a writing signed pursuant to the requirements of the Credit Agreement.

(b) All references in the Loan Documents to the Credit Agreement shall mean the Credit Agreement as hereby modified and amended. This Amendment shall also constitute a Loan Document and all terms and conditions of the Credit Agreement (as modified herein) including, without limitation, the miscellaneous provisions set forth therein, such as consent to jurisdiction, applicable law, and waiver of jury trial, are incorporated herein as though set forth in full and the Agent and the Lenders shall be entitled to the benefits thereof with respect to this Amendment.

(c) This Amendment 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. Delivery of an executed counterpart of a signature page of this Amendment in electronic (*i.e.*, “pdf” or “tif”) format or via “DocuSign” or similar method shall be effective as delivery of a manually executed counterpart of this Amendment. Each of the parties hereto agrees and acknowledges that (i) the transaction consisting of this Amendment may be conducted by electronic means, (ii) it is such party’s intent that, if such party signs this Amendment using an electronic signature, it is signing, adopting and accepting this Amendment and that signing this Amendment using an electronic signature is the legal equivalent of having placed its handwritten signature on this Amendment on paper, and (iii) it is being provided with an electronic or paper copy of this Amendment in a usable format..

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the day and year first above written.

AFC GAMMA, INC.

as Borrower

By: /s/ Brett Kaufman

Name: Brett Kaufman

Title: Chief Financial Officer

AFC FINANCE, LLC

as Agent

By: /s/ Leonard M. Tannenbaum

Name: Leonard M. Tannenbaum

Title: Manager

AFC FINANCE, LLC

as a Lender

By: /s/ Leonard M. Tannenbaum

Name: Leonard M. Tannenbaum

Title: Manager

Signature Page to Second Amendment to Revolving Credit Agreement
