

# BEST BUY CO INC

## FORM 8-K (Current report filing)

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**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) **June 24, 2008**



**BEST BUY CO., INC.**

(Exact name of registrant as specified in its charter)

**Minnesota**  
(State or other jurisdiction  
of incorporation)

**1-9595**  
(Commission  
File Number)

**41-0907483**  
(IRS Employer  
Identification No.)

**7601 Penn Avenue South**  
**Richfield, Minnesota**  
(Address of principal executive offices)

**55423**  
(Zip Code)

Registrant's telephone number, including area code **(612) 291-1000**

**N/A**  
(Former name or former address, if changed since last report.)

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:

- 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))
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**ITEM 2.03 CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT.**

Best Buy Co., Inc. (“Best Buy” or the “registrant”) today announced the closing of an offering of \$500 million of its 6.75% notes due 2013 (the “Notes”) to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”), and to persons outside the United States pursuant to Regulation S under the Securities Act. The Notes will bear interest at a rate of 6.75% per year, payable semi-annually on January 15 and July 15 of each year, beginning on January 15, 2009 through July 15, 2013 (the maturity date). The interest rate payable on the Notes will be subject to adjustment if either Moody’s Investor Services or Standard & Poor’s Ratings Services downgrades to below investment grade the rating assigned to the Notes.

The Notes are unsecured and unsubordinated obligations of the registrant and will rank equally with all other unsecured and unsubordinated debt of the registrant. The Notes were issued pursuant to an indenture (the “Indenture”), as supplemented by a first supplemental indenture (the “Supplemental Indenture”), which contains covenants that, among other things, limit the ability of the registrant and its North American subsidiaries to incur debt secured by liens, to enter into sale and lease-back transactions and, in the case of such subsidiaries, to incur debt as described in the Indenture, a copy of which is attached to this Current Report on Form 8-K as Exhibit 4.1, and is incorporated herein by reference.

The registrant may redeem some or all of the Notes at any time, at a price equal to 100% of the principal amount of the Notes redeemed plus accrued and unpaid interest to the redemption date and an applicable make-whole amount as described in the Supplemental Indenture, a copy of which is attached to this Current Report on Form 8-K as Exhibit 4.2, and is incorporated herein by reference. If a change of control triggering event, as described in the Supplemental Indenture, occurs, the registrant will be required to offer to repurchase the Notes, unless it has exercised its option to redeem the Notes.

In connection with the issuance of the Notes, the registrant entered into a registration rights agreement (the “Registration Rights Agreement”) pursuant to which the registrant agreed, among other things, to use its reasonable best efforts to (i) consummate an exchange offer for the Notes by January 31, 2009, pursuant to which the Notes would be exchanged for substantially identical notes registered under the Securities Act, or (ii) cause a shelf registration statement covering the resale of the Notes to be declared effective. A copy of the Registration Rights Agreement is attached to this Current Report on Form 8-K as Exhibit 4.3, and is incorporated herein by reference.

The registrant intends to use the net proceeds from the sale of the Notes to fund a portion of its purchase of a 50% interest in The Carphone Warehouse Group PLC’s mobile services and retail distribution business as previously announced and referred to in its Current Reports on Forms 8-K and 8-K/A filed with the U.S. Securities and Exchange Commission on May 8, 2008, May 13, 2008 and June 12, 2008.

The above descriptions of the Indenture, the Supplemental Indenture and the Registration Rights Agreement do not purport to be complete statements of the parties’ rights and obligations under these instruments. The above descriptions are qualified in their entirety by reference to the Indenture, the Supplemental Indenture and the Registration Rights Agreement.

**ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS**

(d) *Exhibits*

The following Exhibits are filed as part of this Current Report on Form 8-K.

<u>Number</u>	<u>Description</u>
4.1	Indenture, dated as of June 24, 2008, between Best Buy Co., Inc. and Wells Fargo Bank, N.A., as Trustee
4.2	Supplemental Indenture, dated as of June 24, 2008, between Best Buy Co., Inc. and Wells Fargo Bank, N.A., as Trustee
4.3	Registration Rights Agreement, dated as of June 24, 2008, by and among Best Buy Co., Inc., J.P. Morgan Securities Inc. and Goldman, Sachs & Co. for themselves and on behalf of the other initial purchasers of the Notes

**SIGNATURES**

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

BEST BUY CO., INC.  
(Registrant)

Date: June 24, 2008

By: /s/ SUSAN S. GRAFTON  
Susan S. Grafton  
Vice President, Controller and Chief  
Accounting Officer

**BEST BUY CO., INC.,**

and

**WELLS FARGO BANK, N.A.,**

as Trustee

**Indenture**

Dated as of June 24, 2008

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**TABLE OF CONTENTS**

PAGE

**ARTICLE 1  
DEFINITIONS**

Section 1.01.	Certain Terms Defined	1
Section 1.02.	Other Definitions.	9

**ARTICLE 2  
SECURITY FORMS**

Section 2.01.	Forms Generally	9
Section 2.02.	Form of Trustee's Certificate of Authentication	9

**ARTICLE 3  
ISSUE, EXECUTION, FORM AND REGISTRATION OF SECURITIES**

Section 3.01.	Amount Unlimited; Issuable in Series	10
Section 3.02.	Authentication and Delivery of Securities	13
Section 3.03.	Execution of Securities	13
Section 3.04.	Certificate of Authentication	13
Section 3.05.	Denomination and Date of Securities; Payments of Interest	13
Section 3.06.	Global Security Legend	15
Section 3.07.	Registration, Transfer and Exchange	16
Section 3.08.	Book-Entry Provisions for Global Securities	17
Section 3.09.	Mutilated, Defaced, Destroyed, Lost and Stolen Securities	19
Section 3.10.	Cancellation of Securities	20
Section 3.11.	Temporary Securities	20
Section 3.12.	CUSIP and ISIN Numbers	20

**ARTICLE 4  
CERTAIN COVENANTS**

Section 4.01.	Payments in Respect of Securities	21
Section 4.02.	Limitation on Liens	21
Section 4.03.	Limitation on Sale and Leaseback Transactions	22
Section 4.04.	Limitation on Incurrence of Indebtedness by North American Subsidiaries	23
Section 4.05.	Maintenance of Office or Agency	24
Section 4.06.	Money for Securities Payments to Be Held in Trust	25
Section 4.07.	Existence	26
Section 4.08.	Compliance Certificate	26
Section 4.09.	Waiver of Certain Covenants	27

**ARTICLE 5**  
REMEDIES OF THE TRUSTEE AND HOLDERS ON EVENT OF DEFAULT

Section 5.01.	Events of Default	27
Section 5.02.	Acceleration	28
Section 5.03.	Other Remedies	29
Section 5.04.	Waiver of Past Defaults	29
Section 5.05.	Control by Majority	30
Section 5.06.	Limitation on Suits	30
Section 5.07.	Rights of Holders to Receive Payment	31
Section 5.08.	Collection Suit by Trustee	31
Section 5.09.	Trustee May File Proofs of Claim	31
Section 5.10.	Priorities	32
Section 5.11.	Undertaking for Costs	32
Section 5.12.	Restoration of Rights and Remedies	33
Section 5.13.	Rights and Remedies Cumulative	33
Section 5.14.	Delay or Omission Not Waiver	33

**ARTICLE 6**  
CONCERNING THE TRUSTEE

Section 6.01.	Duties and Responsibilities of the Trustee; During Default: Prior to Default	33
Section 6.02.	Certain Rights of the Trustee	34
Section 6.03.	Trustee Not Responsible for Recitals, Disposition of Securities or Application of Proceeds Thereof	36
Section 6.04.	Trustee and Agents May Hold Securities; Collections, Etc	37
Section 6.05.	Moneys Held by Trustee	37
Section 6.06.	Notice of Default	37
Section 6.07.	Compensation and Indemnification of Trustee and Its Prior Claim	37
Section 6.08.	Right of Trustee to Rely on Officer's Certificate, Etc	38
Section 6.09.	Persons Eligible for Appointment as Trustee	38
Section 6.10.	Resignation and Removal; Appointment of Successor Trustee	39
Section 6.11.	Acceptance of Appointment by Successor	40
Section 6.12.	Merger, Conversion, Consolidation or Succession to Business of Trustee	41
Section 6.13.	Preferential Collection of Claims	42
Section 6.14.	Communications with the Trustee	42

**ARTICLE 7**  
CONCERNING THE HOLDERS

Section 7.01.	Evidence of Action Taken by Holders	43
Section 7.02.	Proof of Execution of Instruments and of Holding of Securities; Record Date	43
Section 7.03.	Who May Be Deemed Owners of Securities	43

Section 7.04.	Securities Owned by Company Deemed Not Outstanding	44
Section 7.05.	Record Date for Action by Securityholders	44
Section 7.06.	Right of Revocation of Action Taken	45

**ARTICLE 8**  
AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 8.01.	Modifications and Amendments With Consent of Holders	45
Section 8.02.	Amendments to or Supplemental Indentures Without Consent of Holders	47
Section 8.03.	Effect of Supplemental Indenture	48
Section 8.04.	Documents to Be Given to Trustee; Compliance with the Trust Indenture Act	48
Section 8.05.	Notation on Securities in Respect of Supplemental Indentures	48

**ARTICLE 9**  
MERGER, CONSOLIDATION OR SALE OR CONVEYANCE OF ASSETS

Section 9.01.	When the Company May Merge, Etc	48
Section 9.02.	Successor Person Substituted	49
Section 9.03.	Opinion of Counsel to Trustee	49

**ARTICLE 10**  
REDEMPTION OF SECURITIES

Section 10.01.	Applicability of Article	50
Section 10.02.	Notice of Redemption; Partial Redemptions	50
Section 10.03.	Payment of Securities Called for Redemption	51

**ARTICLE 11**  
DEFEASANCE AND COVENANT DEFEASANCE

Section 11.01.	Applicability of the Article; Company's Option to Effect Defeasance or Covenant Defeasance	52
Section 11.02.	Full Defeasance and Discharge	52
Section 11.03.	Covenant Defeasance	53
Section 11.04.	Conditions to Legal or Covenant Defeasance	53
Section 11.05.	Deposited Money and Government Securities to Be Held in Trust; Other Miscellaneous Provisions	55
Section 11.06.	Repayment to the Company	55
Section 11.07.	Reinstatement	56

**ARTICLE 12**  
SATISFACTION AND DISCHARGE

Section 12.01.	Satisfaction and Discharge of Indenture	56
Section 12.02.	Application of Trust Money	57



**ARTICLE 13**  
**HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY**

Section 13.01.	Company to Furnish Trustee Names and Addresses of Holders	57
Section 13.02.	Preservation of Information; Communications to Holders	58
Section 13.03.	Reports by the Trustee	59
Section 13.04.	Reports by the Company	59

**ARTICLE 14**  
**MISCELLANEOUS PROVISIONS**

Section 14.01.	Incorporators, Stockholders, Officers and Directors of Company Exempt from Individual Liability	60
Section 14.02.	Provisions of Indenture for the Sole Benefit of Parties and Holders	60
Section 14.03.	Successors and Assigns of Company Bound by Indenture	61
Section 14.04.	Notices to Holders	61
Section 14.05.	Officers, Certificates and Opinions of Counsel; Statements to Be Contained Therein	61
Section 14.06.	Payments Due on Saturdays, Sundays and Holidays	62
Section 14.07.	Conflict of Any Provision of Indenture with Trust Indenture Act	62
Section 14.08.	Governing Law	62
Section 14.09.	Third Party Beneficiaries	62
Section 14.10.	Counterparts	63
Section 14.11.	Effect of Headings	63
Section 14.12.	Severability	63
Section 14.13.	Patriot Act Compliance	63

BEST BUY CO., INC.

Reconciliation and tie between Trust Indenture Act of 1939  
and this Indenture

Trust Indenture Act Section	Indenture Section
§310(a)(1)	6.09
(a)(2)	6.09
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(a)(5)	6.09
(b)	6.10
§311(a)	6.13
(b)	6.13
(b)(2)	13.03(a), 13.03(b)
§312(a)	13.01, 13.02(a)
(b)	13.02(b)
(c)	13.02(c)
§313(a)	13.03(a)
(b)	13.03(a)
(c)	13.03(a), 13.03(b)
(d)	13.03(b)
§314(a)	13.04
(b)	Not Applicable
(c)(1)	14.05
(c)(2)	14.05
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	14.05
§315(a)	6.01
(b)	6.06, 13.03(a)
(c)	6.01
(d)	6.01
(d)(1)	6.01
(d)(2)	6.01
(d)(3)	6.01
(e)	5.11
§316(a)(1)(A)	5.05
(a)(1)(B)	5.02, 5.04
(a)(2)	Not Applicable
(b)	5.07
(c)	7.02
§317(a)(1)	5.08
(a)(2)	5.09
(b)	4.06
§318(a)	14.07

\* This cross-reference table shall not, for any purpose, be deemed to be part of this Indenture.

INDENTURE, dated as of June 24, 2008, between Best Buy Co., Inc., a Minnesota corporation (the “ **Company** ”), and Wells Fargo Bank, N.A., as Trustee (the “ **Trustee** ”).

## **RECITALS OF THE COMPANY**

**WHEREAS** , the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its senior unsecured debentures, notes or other evidences of indebtedness (herein called the “ **Securities** ”), to be issued in one or more series as in this Indenture provided; and

**WHEREAS** , all things necessary to make the Indenture a valid and legally binding indenture and agreement according to its terms, have been done.

**NOW, THEREFORE** :

In consideration of the premises stated herein and the purchase of the Securities by the Holders thereof, the Company and the Trustee mutually covenant and agree for the equal and proportionate benefit of the respective Holders from time to time of the Securities as follows:

### **ARTICLE 1** **DEFINITIONS**

Section 1.01 . *Certain Terms Defined.* The following terms (except as otherwise expressly provided or unless the context otherwise clearly 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 defined in the Trust Indenture Act or the definitions of which in the Securities Act are referred to in the Trust Indenture Act (except as herein otherwise expressly provided or unless the context otherwise clearly requires), shall have the meanings assigned to such terms in the Trust Indenture Act and in the Securities Act as in force at the date of this Indenture. All accounting terms used herein and not expressly defined shall have the meanings given to them in accordance with GAAP (whether or not such is indicated herein). The words “ **herein** ,” “ **hereof** ” and “ **hereunder** ” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article 1 include the plural as well as the singular.

“ **Additional Interest** ” means additional interest, if any, payable by the Company pursuant to an indenture supplemental hereto.

“ **Attributable Value** ” means, as to any lease under which any Person is at the time liable, other than a Capital Lease Obligation, and at any date as of which the amount thereof is to be determined, the total net amount of rent required to be paid by such Person under such lease during the remaining term thereof as determined in accordance with GAAP, discounted from the last date of such term to the date of determination at a rate per annum equal to the discount rate that would be applicable to a Capital Lease Obligation with like term in accordance with GAAP. The net amount of rent required to be paid under any such lease for any such period will be the aggregate amount of rent payable by the lessee with respect to such period after excluding amounts required to be paid on account of insurance, taxes, assessments, utility, operating and labor costs and similar charges. In the case of any lease that is terminable by the lessee upon the payment of a penalty, such net amount will also include the amount of such penalty, but no rent will be considered as required to be paid under such lease subsequent to the first date upon which it may be so terminated.

“ **Attributable Value** ” means, as to a Capital Lease Obligation under which any Person is at the time liable and at any date as of which the amount thereof is to be determined, the capitalized amount thereof that would appear on the face of a balance sheet of such Person in accordance with GAAP.

“ **Authorized Officer** ” means any of the Chairman of the Board, any Vice Chairman of the Board, the President, the Chief Executive Officer, any Vice President, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, any Assistant Controller, the Secretary or any Assistant Secretary, in each case, of the Company.

“ **Board of Directors** ” means, with respect to any Person, the Board of Directors of such Person, or any authorized committee of the Board of Directors of such Person or any officer of such Person duly authorized by the Board of Directors of such Person to take a specific action.

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

“ **Business Day** ” means any day other than a Saturday or a Sunday, that is neither a legal holiday nor a day on which banking institutions are authorized or required by law or regulation to close in New York City.

“ **Capital Lease Obligations** ” means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP,

and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“ **Certificated Securities** ” means Securities issued pursuant to Section 3.01 in exchange for an interest in the Global Security or pursuant to Section 3.08(b) in registered form substantially in the form recited in Section 3.01.

“ **Commission** ” means the Securities and Exchange Commission, or its successor agency or body.

“ **Company** ” means the Person named as the “Company” in the first paragraph of this Indenture until a successor entity shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor entity.

“ **Company Request** ” or “ **Company Order** ” means a written request or order signed in the name of the Company by any Authorized Officer and delivered to the Trustee.

“ **Consolidated Capitalization** ” means the total of all assets appearing on the consolidated balance sheet of the Company and its Subsidiaries, less: (A) current liabilities and (B) deferred income tax liabilities.

“ **Consolidated Net Tangible Assets** ” means the total of all assets appearing on the consolidated balance sheet of the Company and its Subsidiaries, less: (A) current liabilities; (B) intangible assets, including without limitation, such items as goodwill, trademarks, trade names, patents and unamortized debt discount and expense carried as an asset on such balance sheet; and (C) appropriate adjustments on account of minority interests of other Persons holding capital stock in any of the Company’s Subsidiaries.

“ **Corporate Trust Office** ” means the corporate trust office of the Trustee at which the corporate trust business of the Trustee shall, at any particular time, be principally administered, which office is, at the date as of which this Indenture is dated, located at 625 Marquette Avenue, 11th Floor, Minneapolis, Minnesota, 55402, or such address as the Trustee may designate from time to time by notice to the Holders (with a copy to the Company).

“ **Default** ” means any event that is or with the passage of time or the giving of notice or both would, unless cured or waived, be an Event of Default.

“ **Depository** ” means The Depository Trust Company, its nominees, and their respective successors.

“ **Event of Default** ” means any event or condition specified as such in Section 5.01 which shall have continued for the period of time, if any, therein designated.

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

“ **GAAP** ” means accounting principles generally accepted in the United States.

“ **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, with respect to any Person, any obligation, contingent or otherwise, of such Person guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and includes any obligation of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (b) to purchase property, securities or services for the purpose of assuring the holder of such Indebtedness of the payment of such Indebtedness, or (c) to maintain working capital, equity capital or other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness; provided, however, that a Guarantee by any Person will not include endorsements by such Person for collection or deposit, in either case in the ordinary course of business.

“ **Holder** ,” “ **Holder of Securities** ,” “ **Securityholder** ” or other similar terms mean the registered holder of any Security.

“ **Indebtedness** ” means, with respect to any Person at any time of determination, without duplication, the amount which in conformity with GAAP should then be shown on the balance sheet of such Person as a liability in respect of (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid or accrued by such Person, (d) all obligations of such Person for the deferred purchase price of property not constituting a current liability, (e) all Capital Lease Obligations of such Person, (f) net obligations of such Person in respect of interest rate protection agreements, (g) all obligations of such Person, actual or contingent, as an account party in respect of letters of credit or bankers’ acceptances, (h) all guarantees by such Person of Indebtedness of others and (i) all Indebtedness of others secured by any Lien on property owned by such Person, whether or not the Indebtedness secured thereby has been assumed.

“ **Indenture** ” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and, for any series of Securities established as contemplated hereunder, shall include the terms of such series of Securities set forth in any such supplemental indenture.

“ **Initial Purchasers** ” means the initial purchasers of any series of Securities.

“ **Interest Payment Date** ” means, with respect to any Security, the Stated Maturity of an installment of interest on such Security.

“ **Lien** ” means any mortgage, pledge, lien, encumbrance, charge or security interest of any kind, but excluding pledges or deposits under worker’s compensation, unemployment insurance or similar statutes, mechanics’, workmen’s or other similar liens arising in the ordinary course of business or deposits or pledges to obtain the release of any such liens, certain liens for taxes, assessments or governmental charges or levies, landlord’s liens on property held under lease, easements and other liens or encumbrances similar to the foregoing.

“ **Maturity** ” means, with respect to any Security, the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

“ **Moody’s** ” means Moody’s Investors Service, Inc., or any successor thereto.

“ **Net Available Proceeds** ” means, with respect to any Sale Transaction by any Person, cash or readily marketable cash equivalents received (including by way of sale or discounting of a note, installment receivable or other receivable, but excluding any consideration received in the form of assumption of Indebtedness or other obligations by others or received in any other non-cash form) therefrom by such Person, net of (i) all legal, title and recording tax expenses, commissions and other fees and expenses incurred and all federal, state, provincial, foreign and local taxes required to be accrued as a liability as a consequence of such Sale Transaction, (ii) all payments made by such Person or its Subsidiaries on any Indebtedness that is secured by a Lien on the property or assets so disposed of in accordance with the terms of such Lien or that must, by the terms of such Lien, or in order to obtain a necessary consent to such Sale Transaction, or by applicable law, be repaid out of the proceeds from such Sale Transaction, and (iii) all distributions and other payments made to third parties (other than Subsidiaries of the Person making the distribution or other payment) in respect of minority or joint venture interests as a result of such Sale Transaction.

“ **North American Subsidiary** ” means a Subsidiary formed under the laws of, or conducting its principal operations within (1) the United States, any State thereof or the District of Columbia or (2) Canada or any Province or territory thereof.

“ **Officer’s Certificate** ” means a certificate signed by the Chairman of the Board, the President, a Vice President, the Chief Financial Officer, the Controller,

the Treasurer, an Assistant Treasurer or the Secretary of the Corporation, and delivered to the Trustee.

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel who may be an employee of or counsel to the Company which opinion shall be reasonably satisfactory to the Trustee.

“**outstanding**” means, when used with reference to Securities, subject to the provisions of Article 7, as of any particular time, all Securities authenticated and delivered by the Trustee under this Indenture, except:

- (a) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (b) Securities, or portions thereof, for the payment or redemption of which moneys in the necessary amount shall have been deposited by the Company with the Trustee and held in a non-interest bearing trust account for the Holders, or if a party other than the Trustee or the Company is acting as Paying Agent, deposited with such other party, and held in trust for Holders; *provided* that if such Securities or portions thereof are to be redeemed prior to the Maturity thereof, notice of such redemption shall have been given as herein provided, or provision satisfactory to a Responsible Officer of the Trustee shall have been made for giving such notice;
- (c) Securities in substitution for which other Securities shall have been authenticated and delivered, or which shall have been paid, pursuant to the terms of Section 3.09 (unless proof satisfactory to the Trustee and the Company is presented that any of such Securities is held by a Person in whose hands such Security is a legal, valid and binding obligation of the Company); and
- (d) Securities that have been defeased pursuant to Section 11.01.

“**Paying Agent**” means any Person authorized by the Company to pay the principal of and premium, if any, and interest, if any, on any Securities on behalf of the Company. The Trustee will act as initial Paying Agent. The Company may appoint itself to act as Paying Agent with respect to any Securities issued hereunder.



“ **Payment Office** ” means, with respect to the Securities of any series, the place or places where the principal of (and premium, if any) and interest on such Securities are payable as specified as contemplated by Sections 3.01 and 4.01.

“ **Person** ” means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“ **Principal Amount** ” means, with respect to any Security, the amount of principal of such Security that could then be declared due and payable pursuant to Section 5.02.

“ **Principal Property** ” means any real property or any permanent improvement thereon owned by the Company or any North American Subsidiary, including, without limitation, any store, warehouse or distribution center, that has a net book value (after deduction of accumulated depreciation) in excess of 0.50% of Consolidated Net Tangible Assets.

“ **Regular Record Date** ” means, with respect to the interest payable on any Interest Payment Date on the Securities of any series, the date specified for that purpose as contemplated by Section 3.01.

“ **Responsible Officer** ” means, with respect to the Trustee, any officer within the Corporate Trust Office of the Trustee including any vice president, any trust officer, any assistant vice president, any assistant secretary, any assistant treasurer, or any other officer of the Trustee customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of his or her knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“ **Sale and Leaseback Transaction** ” means any arrangement with any Person providing for the leasing to the Company or any Subsidiary of any Principal Property (except for temporary leases for a term, including any renewal thereof, of not more than three years and except for leases between the Company and a Subsidiary or between Subsidiaries), which Principal Property has been or is to be sold or transferred by the Company or such Subsidiary to such Person.

“ **Sale Transaction** ” means any sale, conveyance, transfer or other disposition of the kind referred to in the first sentence of the definition of “Sale and Leaseback Transaction”.

“ **Securities Act** ” means the Securities Act of 1933, as amended.

“ **Security** ” or “ **Securities** ” means any Security or Securities, as the case may be, authenticated and delivered under this Indenture.

“ **Stated Maturity** ” means, with respect to any Security or any installment of principal thereof or interest thereon, the date specified in such Security or a coupon representing such installment of interest as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

“ **Subsidiary** ” means, with respect to any Person, any corporation, partnership, joint venture, limited liability company, association or other business entity of which more than 50% of the outstanding Voting Stock (or equivalent equity interest) is owned, directly or indirectly, by such Person or one or more Subsidiaries of such Person (or a combination thereof). Unless otherwise specified, the term “Subsidiary” means a direct or indirect Subsidiary of the Company.

“ **S&P** ” means Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto.

“ **Trust Indenture Act** ” means the Trust Indenture Act of 1939, as amended, as in force at the date as of which this Indenture was executed and delivered; *provided, however* , that in the event the Trust Indenture Act is amended after such date, “Trust Indenture Act” shall mean, to the extent required by any such amendment, the Trust Indenture Act as so amended.

“ **Trustee** ” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder; *provided, however* , that if at any time there is more than one such Person, “Trustee” means, with respect to the Securities of any series, only the Trustee with respect to Securities of that series.

“ **Value** ” means, with respect to a Sale and Leaseback Transaction, as of any particular time, the amount equal to the greater of (1) the net proceeds from the sale or transfer of the property leased pursuant to such Sale and Leaseback Transaction and (2) the sum of all costs of the Company or any Subsidiary incurred in connection with the acquisition of such property and the construction of any improvements thereon, as determined in good faith by the Company or such Subsidiary at the time of entering into such Sale and Leaseback Transaction, in either case multiplied by a fraction, the numerator of which shall be equal to the number of full years of the term of the lease that is part of such Sale and Leaseback Transaction remaining at the time of determination and the denominator of which shall be equal to the number of full years of such term, without regard to any renewal or extension options contained in the lease.

“ **Voting Stock** ” means, with respect to any specified “person” (as that term is used in Section 13(d) of the Exchange Act) as of any date, the capital stock of such person that is at the time entitled to vote generally in the election of the board of directors of such person.

“ **Wholly Owned Subsidiary** ” means, with respect to any Person, any corporation, partnership, limited liability company, joint venture, trust or other entity as to which 100% of the voting power of its outstanding capital stock or other ownership interests is owned, directly or indirectly, by such Person, by one or more other Wholly Owned Subsidiaries of such Person or by such Person and one or more other Wholly Owned Subsidiaries of such Person. Unless otherwise indicated, any reference to a Wholly Owned Subsidiary means a Wholly Owned Subsidiary of the Company.

Section 1.02 . *Other Definitions.*

	<b>Defined in Section</b>
“Agent Members”	3.08(a)
“Covenant Defeasance”	11.03
“Full Defeasance”	11.02
“Global Security”	3.05(b)
“Notice of Default”	6.06
“Registrar”	3.07
“Security Register”	3.07

**ARTICLE 2**  
**SECURITY FORMS**

Section 2.01 . *Forms Generally.* The Securities shall be in substantially the forms as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.02 for the authentication and delivery of such Securities.

The Trustee’s certificate of authentication on all Securities shall be in substantially the form set forth in this Article 2.

The definitive Securities shall be printed or produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

Section 2.02 . *Form of Trustee’s Certificate of Authentication.* The Trustee’s certificate of authentication shall be substantially in the following form:

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

Wells Fargo Bank, N.A., as Trustee

By: \_\_\_\_\_  
Authorized Signatory

**ARTICLE 3**  
ISSUE, EXECUTION, FORM AND REGISTRATION OF SECURITIES

Section 3.01 . *Amount Unlimited; Issuable in Series.* The aggregate Principal Amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued from time to time in one or more series. Prior to the issuance of Securities of any series, there shall be established in or pursuant to (i) one or more Board Resolutions, (ii) action taken pursuant to a Board Resolution and (subject to Sections 3.03 and 3.04) set forth, or determined in the manner provided, in an Officer's Certificate or (iii) one or more indentures supplemental hereto:

- (a) the title of the Securities of the series (which shall distinguish the Securities of the series from Securities of all other series);
- (b) the purchase price, denomination and any limit upon the aggregate Principal Amount of the Securities of the series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Sections 3.07, 3.09, 8.05 or 10.02);
- (c) the date or dates on which the principal of and premium, if any, on the Securities of the series is payable or the method of determination thereof, any rights the Company might have to extend the Maturity of the Securities of the series and any rights of the holders of the Securities to require payment of the Securities at any time;
- (d) the rate or rates at which the Securities of the series shall bear interest, if any, or the method of calculating such rate or rates of interest, the date or dates from which such interest shall accrue, if any, or the method by which such date or dates shall be determined, if any, the Interest Payment Dates on which any such interest shall be payable, if any, and the Regular Record Dates, if any, for the interest payable on any Interest Payment Date;

- (e) the place or places where the principal of and premium, if any, and interest, if any, on Securities of the series shall be payable;
- (f) the place or places where the Securities may be exchanged or transferred;
- (g) the period or periods within which, the price or prices at which, the currency or currencies (including currency unit or units) in which, and the other terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company, if the Company is to have that option, and, if other than as provided in Section 10.02, the manner in which the particular Securities of such series (if less than all Securities of such series are to be redeemed) are to be selected for redemption;
- (h) the obligation, if any, of the Company to redeem or purchase Securities of the series in whole or in part pursuant to any sinking fund or similar provisions or upon the happening of a specified event or at the option of a Holder thereof and the period or periods within which, the price or prices at which, and the other terms and conditions upon which Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;
- (i) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which Securities of the series shall be issuable;
- (j) if other than U.S. dollars, the currency or currencies (including currency unit or units) in which payments of principal of and premium, if any, and interest, if any, on the Securities of the series shall or may be payable, or in which the Securities of the series shall be denominated, and the particular provisions applicable thereto;
- (k) if the payments of principal of and premium, if any, and interest, if any, on the Securities of the series are to be made, at the election of the Company or a Securityholder, in a currency or currencies (including currency unit or units) other than that in which such Securities are denominated or designated to be payable, the currency or currencies (including currency unit or units) in which such payments are to be made, the terms and conditions of such payments and the manner in which the exchange rate with respect to such payments shall be determined, and the particular provisions applicable thereto;
- (l) if the amount of payments of principal of and premium, if any, and interest, if any, on the Securities of the series shall be determined with reference to an index, formula or other method (which index, formula or method may be based, without limitation, on a currency or currencies

(including currency unit or units) other than that in which the Securities of the series are denominated or designated to be payable), the index, formula or other method by which such amounts shall be determined;

(m) if other than the Principal Amount thereof, the portion of the Principal Amount of Securities of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 5.02 or the method by which such portion shall be determined;

(n) any modifications of or additions to the Events of Default or the covenants of the Company set forth herein with respect to Securities of the series;

(o) if either or both of Section 11.02 and Section 11.03 shall be inapplicable to the Securities of the series (provided that if no such inapplicability shall be specified, then both Section 11.02 and Section 11.03 shall be applicable to the Securities of the series);

(p) if other than the Trustee, the identity of the Registrar and any Paying Agent;

(q) if the Securities of the series shall be issued in whole or in part in global form, (i) the Depositary for such global Securities, (ii) the form of any legend in addition to or in lieu of that in Section 3.06 which shall be borne by such global Security, (iii) whether beneficial owners of interests in any Securities of the series in global form may exchange such interests for Certificated Securities of such series and of like tenor of any authorized form and denomination and (iv) if other than as provided in Section 3.07, the circumstances under which any such exchange may occur; and

(r) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 8.02, but which may modify or delete any provision of this Indenture insofar as it applies to such series), including any terms which may be required by or advisable under the laws of the United States of America or regulations thereunder or advisable (as determined by the Company) in connection with the marketing of Securities of the series.

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided (i) by one or more Board Resolutions, (ii) by action taken pursuant to a Board Resolution and (subject to Sections 3.02 through 3.05) set forth, or determined in the manner provided, in an Officer's Certificate or (iii) in any indenture supplemental hereto. All Securities of any series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the Holders, for issuances of additional Securities of such series.

If any of the terms of the Securities of any series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officer's Certificate setting forth, or providing the manner for determining, the terms of the Securities of such series, and an appropriate record of any action taken pursuant thereto in connection with the issuance of any Securities of such series shall be delivered to the Trustee prior to the authentication and delivery thereof.

Section 3.02 . *Authentication and Delivery of Securities.* Upon the execution and delivery of this Indenture, or from time to time thereafter, Securities may be executed on behalf of the Company by any Authorized Officer and delivered to the Trustee for authentication, and upon delivery to the Trustee of all documents and certificates as required by this Indenture, the Trustee shall thereupon authenticate and make available for delivery such Securities to or upon a Company Order without any further action by the Company.

Section 3.03 . *Execution of Securities.* The Securities shall be signed on behalf of the Company by its Chairman of the Board of Directors or any Vice Chairman of the Board of Directors or its President or any Vice President (whether or not designated by a number or numbers or a word or words added before or after the title "Vice President") or its Treasurer. Signatures may be the manual or facsimile signatures of the present or any future such officers. In case any officer of the Company who shall have signed any Security shall cease to be such officer before the Security so signed shall be authenticated and delivered by the Trustee or disposed of by the Company, such Security nevertheless may be authenticated and delivered or disposed of as though the person who signed such Security had not ceased to be such officer of the Company, as the case may be; and any Security may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Security shall be the proper officers of the Company, as the case may be, although at the date of the execution and delivery of this Indenture any such person was not such officer.

Section 3.04 . *Certificate of Authentication.* Only such Securities as shall bear thereon a certificate of authentication substantially in the form hereinabove recited, executed by the Trustee by manual signature of one of its authorized signatories, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

Section 3.05 . *Denomination and Date of Securities; Payments of Interest.* (a) The Securities shall be issuable in such denominations as shall be specified as contemplated by Section 3.01. In the absence of any such provisions with respect to the Securities, the Securities shall be issuable in denominations of \$1,000 and any integral multiples thereof, The Securities shall be numbered, lettered, or

otherwise distinguished in such manner or in accordance with such plans as the officers of the Company executing the same may determine with the approval of the Trustee.

Any of the Securities may be issued with appropriate insertions, omissions, substitutions and variations, and may have imprinted or otherwise reproduced thereon such legend or legends, not inconsistent with the provisions of this Indenture, as may be required to comply with any law or with any rules or regulations pursuant thereto, including those required by Section 3.06, or with the rules of any securities market in which the Securities are admitted to trading, or to conform to general usage.

Each Security shall be dated the date of its authentication, shall bear interest from the applicable date and shall be payable on the dates specified on the face of the Security. Except as otherwise specified pursuant to Section 3.01 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

(b) If Securities of any series are issuable in whole or in part in global form (“**Global Securities**”), then the Global Securities of such series shall be deposited with the Trustee as custodian for the Depository and registered in the name of Cede & Co., as nominee for the Depository. Global Securities shall be deposited on behalf of the purchasers of the Securities represented thereby with the Trustee, as custodian for the Depository (or with such other custodian as the Depository may direct), and registered in the name of the Depository or a nominee of the Depository, duly executed by the Company and authenticated by the Trustee as previously provided. The aggregate Principal Amount of the Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee as hereinafter provided. Each such Global Security shall constitute a single security for all purposes under this Indenture.

(c) The person in whose name any Security is registered at the close of business on any Regular Record Date with respect to any Interest Payment Date, with respect to such Security, shall be entitled to receive the interest, if any, payable on such Interest Payment Date notwithstanding any transfer or exchange of such Security subsequent to the Regular Record Date and prior to such Interest Payment Date, except that, if and to the extent the Company defaults in the payment of any interest due on such Interest Payment Date and the applicable grace period shall have expired with respect to such Security, in which case such defaulted interest may, at the option of the Company, be paid to the Persons in whose names outstanding Securities are registered at the close of business on a subsequent record date (which shall be not less than 10 days prior to the date of payment of such defaulted interest) established by notice given by mail by or on behalf of the Company to the Holders of Securities not less than 15 days preceding such subsequent record date.



(d) Whenever the Company shall act as sole Paying Agent for any series of Securities, it shall (i) make all payments in respect of any Global Security (including principal and interest, if any) by wire transfer of immediately available funds to the account or accounts specified by the Holder of the Global Security and (ii) make all payments of principal and interest, if any, with respect to any Certificated Securities by wire transfer of immediately available funds to the account or accounts specified by the Holders of the Certificated Securities or, if no such account is specified, or if the Company so elects, by mailing a check to each such Holder's registered address.

Whenever the Company shall act as one of more than one Paying Agents for any series of Securities, the provisions of Section 4.06(b) shall apply.

Section 3.06 . *Global Security Legend.* Any Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form, or in such other form as may be necessary or appropriate to reflect the arrangements with or to comply with the requirements of any Depository:

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS OWNER AND HOLDER OF THIS SECURITY FOR ALL PURPOSES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO THE DEPOSITORY TRUST COMPANY OR TO NOMINEES OF THE DEPOSITORY TRUST COMPANY OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE.

Section 3.07 . *Registration, Transfer and Exchange.* The Securities are issuable only in registered form without coupons. The Company will keep at each office or agency (the “**Registrar**”) for each series of Securities a register or registers (one or more such registers being referred to as the “**Security Register**”) in which, subject to such reasonable regulations as it may prescribe, it will register, and will register the transfer of, Securities as in this Article 3 provided. The Security Register shall be in written form in the English language or in any other form capable of being converted into such form within a reasonable time. At all reasonable times the Security Register shall be open for inspection by the Trustee. The initial Registrar shall be the Trustee.

Upon due presentation for registration of transfer of any Security of any series at each such office or agency, the Company shall execute and the Trustee shall authenticate and make available for delivery in the name of the designated transferee or transferees a new Security or Securities of the same series, in each case, of any authorized denominations and of a like aggregate Principal Amount.

At the option of the Holder, Securities of any series (except a Global Security) may be exchanged for other Securities of the same series, of any authorized denominations and of a like aggregate Principal Amount and Stated Maturity, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and make available for delivery, the Securities which the Holder making the exchange is entitled to receive.

A Holder may transfer a Security only by written application to the Registrar stating the name of the proposed transferee and otherwise complying with the terms of this Indenture. No such transfer shall be effected until, and such transferee shall succeed to the rights of a Holder only upon, final acceptance and registration of the transfer by the Registrar in the Security Register. Prior to the registration of any transfer by a Holder as provided herein, the Company, the Trustee, and any agent of the Company shall treat the Person in whose name the Security is registered as the owner thereof for all purposes whether or not the Security shall be overdue, and neither the Company, the Trustee, nor any such agent shall be affected by notice to the contrary. Furthermore, any Holder of a Global Security shall, by acceptance of such Global Security, agree that transfers of beneficial interests in such Global Security may be effected only through a book entry system maintained by the Holder of such Global Security (or its agent) and that ownership of a beneficial interest in the Security shall be required to be reflected in a book entry. When Securities are presented to the Registrar or a co-Registrar with a request to register the transfer or to exchange them for an equal Principal Amount of Securities of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if the requirements for such transactions set forth herein are met. To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Securities at the Registrar’s request.

The Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any exchange or registration of transfer of Securities (other than any such transfer taxes or other similar governmental charge payable upon exchanges pursuant to Section 3.11, 8.05 or 10.03). No service charge to any Holder shall be made for any such transaction.

The Company shall not be required to exchange or register a transfer of (a) any Securities of any series for a period of 15 days next preceding the first mailing of a notice of redemption of Securities of that series to be redeemed or (b) any Securities of any series selected, called or being called for redemption except, in the case of any Security of any series where public notice has been given that such Security is to be redeemed in part, the portion thereof not so to be redeemed.

All Securities issued upon any transfer or exchange of Securities shall be valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such transfer or exchange.

Section 3.08 . *Book-Entry Provisions for Global Securities.* (a) Each Global Security initially shall (i) be registered in the name of the Depository for such Global Securities or the nominee of such Depository, (ii) be delivered to the Trustee as custodian for such Depository or such nominee and (iii) bear legends as set forth in Section 3.06.

Members of, or participants in, the Depository (“**Agent Members**”) shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Security, and the Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any Security.

(b) Transfers of a Global Security shall be limited to transfers of such Global Security in whole, but not in part, to the Depository for such series, its successors or their respective nominees. If at any time the Depository for the Securities of such series notifies the Company that it is unwilling or unable to continue as Depository or if at any time the Depository shall no longer be qualified to serve as the Depository, the Company shall appoint a successor depository with respect to the Securities of such series. If a successor depository for the Securities of such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Trustee, upon receipt of a Company Order for the authentication and delivery

of definitive Securities of such series of like tenor, will authenticate and deliver Certificated Securities of such series of like tenor and terms in an aggregate Principal Amount equal to the Principal Amount of the Global Security or Securities of such series in exchange for such Global Security or Securities.

The Company may at any time and in its sole discretion determine that the Securities of a series issued in the form of one or more Global Securities shall no longer be represented by such Global Securities. In such event, the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of Certificated Securities of such series of like tenor and terms, will authenticate and deliver Securities of such series of like tenor and terms in definitive form in an aggregate Principal Amount equal to the Principal Amount of the Global Security or Securities of such series in exchange for such Global Security or Securities. Interests of beneficial owners in a Global Security may be transferred in accordance with the rules and procedures of the Depository. In addition, Certificated Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Security, if (i) the Depository (A) notifies the Company that it is unwilling or unable to continue as Depository for such Global Security, and a successor depository is not appointed by the Company within 90 days of such notice, or (B) ceases to be qualified to serve as Depository and a successor depository is not appointed by the Company within 90 days of such notice, (ii) the Company executes and delivers to the Trustee a Company Order that such Global Security shall be so transferable, registrable and exchangeable, and such transfers shall be registrable, or (iii) an Event of Default of which the Trustee has actual notice has occurred and is continuing and the Registrar has received a request from the Depository to issue such Certificated Securities.

(c) Any beneficial interest in one of the Global Securities that is transferred to a person who takes delivery in the form of an interest in the another Global Security will, upon such transfer, cease to be an interest in such Global Security and become an interest in the other Global Security and, accordingly, will thereafter be subject to all transfer restrictions, if any, and other procedures applicable to beneficial interests in such other Global Security for as long as it remains such an interest.

(d) In connection with any transfer of a portion of the beneficial interests in a Global Security to beneficial owners pursuant to Section 3.08(b), the Registrar shall reflect on its books and records the date and a decrease in the Principal Amount of such Global Security in an amount equal to the Principal Amount of the beneficial interest in such Global Security to be transferred, and the Company shall execute, and the Trustee shall authenticate and make available for delivery, one or more Certificated Securities of like tenor and amount.

(e) In connection with the transfer of an entire Global Security to beneficial owners pursuant to Section 3.08(b), such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall

execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depository in exchange for its beneficial interest in such Global Security, an equal Principal Amount of Certificated Securities of authorized denominations.

(f) The registered holder of a Global Security may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities of such series.

Section 3.09 . *Mutilated, Defaced, Destroyed, Lost and Stolen Securities.* In case any temporary or definitive Security shall become mutilated, defaced or be apparently destroyed, lost or stolen, the Company in its discretion may execute, and upon the delivery to the Trustee of a Company Order and of all documents and certificates as required by this Indenture, the Trustee shall authenticate and make available for delivery, a new Security of the same series bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated or defaced Security, or in lieu of and substitution for the Security so apparently destroyed, lost or stolen. In every case the applicant for a substitute Security shall furnish to the Company and the Trustee and any agent of the Company or the Trustee such security or indemnity as may be required by each of them to indemnify and defend and to save each of them harmless and, in every case of destruction, loss or theft, evidence to their satisfaction of the apparent destruction, loss or theft of such Security and of the ownership thereof.

Upon the issuance of any substitute Security, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith. In case any Security which has matured or is about to mature, or has been called for redemption in full, shall become mutilated or defaced or be apparently destroyed, lost or stolen, the Company may, instead of issuing a substitute Security of the same series, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated or defaced Security), if the applicant for such payment shall furnish to the Company and to the Trustee and any agent of the Company or the Trustee such security or indemnity as any of them may require to save each of them harmless from all risks, however remote, and, in every case of apparent destruction, loss or theft, the applicant shall also furnish to the Company and the Trustee and any agent of the Company or the Trustee evidence to their satisfaction of the apparent destruction, loss or theft of such Security and of the ownership thereof.

Every substitute Security issued pursuant to the provisions of this Section 3.09 by virtue of the fact that any Security is apparently destroyed, lost or stolen shall constitute an additional contractual obligation of the Company whether or not the apparently destroyed, lost or stolen Security shall be at any time enforceable by anyone and shall be entitled to all the benefits of (but shall be

subject to all the limitations of rights set forth in) this Indenture equally and proportionately with any and all other Securities duly authenticated and delivered hereunder. All Securities shall be held and owned upon the express condition that, to the extent permitted by law, with respect to the holder of a substitute Security, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, defaced, or apparently destroyed, lost or stolen Securities 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 of negotiable instruments or other securities without their surrender.

Section 3.10 . *Cancellation of Securities.* All Securities surrendered for payment, redemption, registration of transfer or exchange, if surrendered to the Company or any agent of the Company or the Trustee, shall be delivered to the Trustee for cancellation or, if surrendered to the Trustee, shall be cancelled by it; and no Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of cancelled Securities in accordance with its customary procedures. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation.

Section 3.11 . *Temporary Securities.* Pending the preparation of definitive Securities of any series, the Company may execute and the Trustee shall authenticate and make available for delivery temporary Securities of such series (printed, typewritten or otherwise reproduced, in each case in form satisfactory to the Trustee). Temporary Securities shall be issuable as registered Securities of such series without coupons, of any authorized denomination, and substantially in the form of the definitive Securities of such series but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company with the concurrence of the Trustee. Temporary Securities may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Security shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities of such series. Without unreasonable delay the Company shall execute and shall furnish definitive Securities of such series and thereupon temporary Securities of such series may be surrendered in exchange therefor without charge at each office or agency to be maintained by the Company for the purpose pursuant to Section 4.05, and upon delivery to the Trustee of all documents and certificates as required by this Indenture, the Trustee shall authenticate and make available for delivery in exchange for such temporary Securities a like aggregate Principal Amount of definitive Securities of such series of authorized denominations. Until so exchanged the temporary Securities of such series shall be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 3.12 . *CUSIP and ISIN Numbers.* The Company in issuing the Securities of any series may use a “CUSIP” or “ISIN” number (if then generally

in use), and, if so, the Trustee shall use the CUSIP numbers or ISIN numbers, as the case may be, in notices of redemption or exchange as a convenience to Holders of such series; *provided* that any such notice shall state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption or exchange and that reliance may be placed only on the other identification numbers printed on the Securities and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in the CUSIP numbers or ISIN numbers.

#### **ARTICLE 4** **CERTAIN COVENANTS**

Section 4.01 . *Payments in Respect of Securities.* The Company, for the benefit of each series of the Securities, will duly and punctually pay or cause to be paid the principal of and premium, if any, and interest, if any (including Additional Interest, if any), on the Securities of that series in accordance with the terms of such Securities and this Indenture.

Section 4.02 . *Limitation on Liens.* (a) The Company shall not, and shall not permit any of its North American Subsidiaries, directly or indirectly, to issue, assume or guarantee any Indebtedness if that Indebtedness is secured by any Lien upon any Principal Property of the Company or of a North American Subsidiary, without effectively securing each series of Securities equally and ratably with that Indebtedness for so long as such Indebtedness is so secured. The foregoing restriction does not apply to:

(i) Liens on any property acquired, constructed or improved by the Company or any North American Subsidiary after the date of this Indenture which are created or assumed contemporaneously with or within one year after its acquisition, or completion of construction or improvement, or within one year thereafter pursuant to a firm commitment for financing arrangements entered into within that one-year period to secure or provide for the payment of the purchase price or cost thereof; *provided* that the aggregate principal amount of Indebtedness secured by such Liens will not exceed the cost of the property or assets so acquired, constructed or improved; or in addition to Liens contemplated by Section 4.02(a)(ii) and 4.02(a)(iii) below, Liens existing on any property at the time of acquisition thereof;

(ii) Liens existing on any property at the time of acquisition thereof from a Person merged or consolidated with or into the Company or a North American Subsidiary; *provided* that the Lien is not created in contemplation of or in connection with such acquisition, merger or consolidation;

(iii) Liens on property of any Person existing at the time it becomes a North American Subsidiary;

(iv) Liens to secure Indebtedness of a North American Subsidiary owed to the Company or Indebtedness of the Company or a North American Subsidiary owed to another North American Subsidiary;

(v) Liens consisting solely of encumbrances, rights-of-way, restrictions (including zoning restrictions), minor defects or irregularities in title and other similar charges or encumbrances not, in any material respect, impairing the use of the encumbered property for its intended purpose;

(vi) any Lien existing on the date of this Indenture; or

(vii) Liens for the sole purpose of extending, renewing, replacing or refinancing Indebtedness secured by any Lien referred to in Section 4.02(a)(i) through 4.02(a)(vi), inclusive; *provided, however*, that the principal amount of Indebtedness secured by that Lien shall not exceed the principal amount of Indebtedness so secured at the time of such extension, renewal, replacement or refinancing, and that such extension, renewal, replacement or refinancing shall be limited to the property that secured the Lien so extended, renewed, replaced or refinanced (plus improvements on such property).

(b) The foregoing limitation on Liens shall not apply to the issuance, assumption or guarantee by the Company or any North American Subsidiary of Indebtedness secured by a Lien which would otherwise be subject to the foregoing restrictions up to an aggregate amount which, together with all other Indebtedness of the Company and its North American Subsidiaries secured by Liens (not including Liens permitted under the foregoing exceptions) that would otherwise be subject to the foregoing restrictions and the Value of Sale and Leaseback Transactions existing at that time (other than Sale and Leaseback Transactions that, if such Sale and Leaseback Transaction had been a Lien, would have been permitted under clause (a)(i) above and other than Sale and Leaseback Transactions as to which application of amounts have been made in accordance with Section 4.03(c)), does not at the time exceed the greater of 15% of Consolidated Net Tangible Assets and 10% of Consolidated Capitalization.

Section 4.03. *Limitation on Sale and Leaseback Transactions* . The Company shall not, and shall not permit any of its North American Subsidiaries to, enter into any Sale and Leaseback Transaction unless the net proceeds of the Sale and Leaseback Transaction are at least equal to the sum of all costs incurred by the Company or any North American Subsidiary in connection with the acquisition of, and construction of any improvements on, the Principal Property to be leased and:



(a) the Company or the North American Subsidiary would be entitled to incur Indebtedness secured by a Lien on the Principal Property to be leased without equally and ratably securing the Securities, pursuant to Section 4.02(a)(i);

(b) the Company or the North American Subsidiary would be entitled to incur Indebtedness secured by a Lien on the Principal Property to be leased without equally and ratably securing the Securities, pursuant to Section 4.02(b); or

(c) the Company or the North American Subsidiary shall, within 180 days of the effective date of any such arrangement (or, in the case of clause (ii) below, within six months thereafter pursuant to a firm purchase commitment entered into within such 180-day period) apply an amount equal to the proceeds from such Sale and Leaseback Transaction relating to such Principal Property to:

(i) the payment or other retirement of Indebtedness incurred or assumed by the Company or any North American Subsidiary that ranks senior to or equal with the Securities (other than Indebtedness owned or held by the Company or any North American Subsidiary); or

(ii) the purchase of other Principal Property.

Section 4.04. *Limitation on Incurrence of Indebtedness by North American Subsidiaries* . The Company shall not permit any North American Subsidiary to incur, create or assume any Indebtedness, except:

(a) obligations under the Credit Agreement dated as of September 19, 2007, as amended as of June 17, 2008, as further amended, supplemented or otherwise modified from time to time, among the Company, the subsidiary guarantors party thereto, the lenders party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent, J.P. Morgan Securities Inc., as sole lead arranger and sole bookrunner, and Bank of America, N.A., HSBC Bank USA, N.A. and U.S. Bank National Association, as syndication agents, and any extensions, renewals, replacements or refinancings thereof;

(b) Indebtedness existing on the date of this Indenture;

(c) any other Indebtedness incurred to refund, refinance, replace, exchange, renew, repay or extend Indebtedness existing on the date of this Indenture or incurred in compliance with this Indenture (and any Indebtedness that may be incurred after the date of this Indenture under commitments available on the date of this Indenture), and Indebtedness the proceeds of which are used solely to refinance such Indebtedness;

(d) Indebtedness of any Person merged or consolidated into the Company or into a North American Subsidiary existing prior to the time of such

merger or consolidation; *provided* that the Indebtedness is not created in contemplation of or in connection with such merger or consolidation;

(e) Indebtedness of North American Subsidiary outstanding on the date on which such North American Subsidiary was acquired by the Company and any extensions, renewals, replacements or refinancings thereof (other than Indebtedness incurred (i) to provide all or any portion of the funds utilized to consummate the transaction or series of related transactions pursuant to which such North American Subsidiary became a North American Subsidiary or was otherwise acquired by the Company or (ii) otherwise in connection with, or in contemplation of, such acquisition);

(f) Indebtedness of a North American Subsidiary owed to the Company or to another Subsidiary;

(g) Indebtedness secured by Liens permitted by Section 4.02(a)(i), (ii), (iii), (vi) and (vii);

(h) Indebtedness permitted by Section 4.03;

(i) Indebtedness in respect of documentary letters of credit incurred in the ordinary course of business;

(j) current liabilities, other than for borrowed money, incurred in the ordinary course of business; and

(k) in addition to the items referred to in Section 4.04(a) through 4.04(j), Indebtedness at any time outstanding in an aggregate principal amount which will not exceed 15% of Consolidated Net Tangible Assets.

Section 4.05 . *Maintenance of Office or Agency.* The Company shall maintain a Payment Office where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer or exchange, and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices, and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby initially appoints the Trustee at its office or agency as its agent to receive all such presentations, surrenders, notices and demands.

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

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

Section 4.06 . *Money for Securities Payments to Be Held in Trust.* (a) If the Company shall at any time act as Paying Agent with respect to any series of Securities, it shall, on or before each due date of the principal of or any premium or interest on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and any premium and interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

(b) Subject to the provisions of Section 3.05(d), whenever the Company shall have one or more Paying Agents for any series of Securities, it shall, prior to each due date of the principal of or any premium or interest on any Securities of that series, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

(c) The Company shall cause each Paying Agent for any series of Securities (other than the Trustee) to execute and deliver to the Trustee an instrument in which such Paying Agent will agree with the Trustee, subject to the provisions of this Section 4.06, that such Paying Agent will (i) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent; (ii) hold all sums held by it for the payment of the principal of and premium, if any, or interest, if any, on the Securities of that series in trust for the benefit of the Holders until such sums shall be paid to such Holders or otherwise disposed of as herein provided; (iii) give the Trustee notice of any default by the Company (or any other obligor upon the Securities) in the making of any payment of principal (and premium, if any) or interest, if any, on the Securities of that series; and (iv) during the continuance of any default by the Company (or any other obligor upon the Securities of that series) in the making of any payment in respect of the Securities of that series, and upon the written request of that Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities of that series.

(d) The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the

Trustee, such Paying Agent will be released from all further liability with respect to such money.

(e) Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or premium, if any, or interest, if any, on any Security of any series and remaining unclaimed for two years after such principal, premium or interest has become due and payable will be paid to the Company upon a Company Request (or, if then held by the Company, will be discharged from such trust); and the Holder of such Security will thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, 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 Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 calendar days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 4.07 . *Existence*. Subject to Article 9, the Company shall 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, however*, that the Company shall not be required to preserve any such right or franchise if the Board of Directors determines that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof will not result in a material adverse effect on the business, results of operations or financial condition of the Company and its consolidated Subsidiaries taken as a whole.

Section 4.08 . *Compliance Certificate*. The Company shall deliver to the Trustee, within 120 calendar days after the end of each fiscal year of the Company ending after the first date any series of Securities issued under this Indenture is outstanding, an Officer's Certificate signed by the principal financial officer or principal accounting officer of the Company stating that a review of the activities of the Company during the preceding fiscal year has been made under the supervision of the signing officer with a view to determining whether the Company has performed its obligations under this Indenture, and further stating, that, to the knowledge of such officer, the Company has performed each covenant contained in this Indenture to be performed by it hereunder, and is not in default in the performance of any covenant to be performed by it hereunder (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which such officer may have knowledge and what action the Company is taking or proposes to take with respect thereto) and that, to the knowledge of such officer, no event has occurred and remains in existence by reason of which payments on account of the principal of and premium, if any, or interest, if any, on the Securities is prohibited (or if such event has occurred, a

description of the event and what action the Company is taking or proposes to take with respect thereto).

Section 4.09 . *Waiver of Certain Covenants*. The Company may omit in any particular instance to comply with any term, provision, or condition set forth in the provisions of any supplemental indenture specified in such supplemental indenture, with respect to the Securities of any series if the Holders of a majority in Principal Amount of all outstanding Securities of such series shall, by act of such Holders in accordance with Section 7.01, either waive such compliance in such instance or generally waive compliance with such term, provision, or condition, but no such waiver will extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision, or condition will remain in full force and effect.

## ARTICLE 5 REMEDIES OF THE TRUSTEE AND HOLDERS ON EVENT OF DEFAULT

Section 5.01 . *Events of Default*. Each of the following shall constitute an “**Event of Default**” wherever used herein with respect to Securities of any series:

- (a) the Company’s failure to pay principal of or premium, if any, on any Security of such series when it becomes due and payable, whether at Stated Maturity, upon redemption, upon purchase, upon acceleration or otherwise;
- (b) the Company’s failure to pay any interest, if any (including Additional Interest, if any), on any Security of such series when it becomes due and payable, and the continuance of any such failure for a period of 30 days; *provided* that failure by the Company to make such a payment shall not constitute an Event of Default if the Company makes such payment as required during such 30-day period;
- (c) the Company’s failure to perform any other covenant in this Indenture and the continuance of any such failure for 90 days after written notice has been given, in the manner provided in Section 6.06, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate Principal Amount of the outstanding Securities of such series, specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder;
- (d) a default or defaults under any Indebtedness, or any agreement or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness, of the Company or any Subsidiary, which default or defaults, individually or in the aggregate:

(i) constitute a failure to pay at least \$100,000,000 of the principal of such Indebtedness when due (unless such default is waived or cured within 30 days after the expiration of any applicable grace period); or

(ii) have resulted in acceleration of any portion of such Indebtedness having an aggregate Principal Amount equal to or in excess of \$100,000,000,

in the case of each of clause (i) and (ii), without the overdue or accelerated portion of such Indebtedness having been discharged, or without such acceleration having been rescinded or annulled, within 60 days after written notice of such default has been given, in the manner provided in Section 6.06, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate Principal Amount of the outstanding Securities of such series, specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(e) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 90 consecutive days; or

(f) the commencement by the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company, in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestration or other similar official of the Company, or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company, in furtherance of any such action.

Section 5.02 . *Acceleration.* (a) If an Event of Default (other than an Event of Default specified in Section 5.01(e) or 5.01(f)) shall occur and be

continuing, either the Trustee by written notice to the Company or the Holders of at least 25% in aggregate Principal Amount of the outstanding Securities of that series by written notice to the Company and the Trustee may declare the Principal Amount of and premium, if any, and accrued and unpaid interest, if any, on all the Securities of the affected series to be due and payable immediately. Except as set forth above, upon such declaration the principal of and premium, if any, and accrued and unpaid interest, if any, on the Securities of such series shall be due and payable immediately. If an Event of Default specified in Section 5.01(e) or 5.01(f) shall occur, the Principal Amount of and premium, if any, and accrued and unpaid interest, if any, on all the Securities of such series shall *ipso facto* become and be immediately due and payable without further action or notice on the part of the Trustee or any Holder.

(b) At any time after such a declaration of acceleration with respect to the Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article 5 provided, the Holders of a majority in Principal Amount of the outstanding Securities of such series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if all Events of Default with respect to the Securities of that series, other than the non-payment of the principal of and premium, if any, and interest, if any, on the Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.04. No such rescission will affect any subsequent default or impair any right consequent thereon.

Section 5.03 . *Other Remedies.* If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of or interest on the Securities of such series or to enforce the performance of any provision of the Securities of such series or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities of such series or does not produce any of them in the proceeding and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 5.04 . *Waiver of Past Defaults.* The Holders of not less than a majority in aggregate Principal Amount of the Securities of any series then outstanding by written notice to the Trustee may on behalf of the Holders of all of

the Securities of such series waive any existing Default or Event of Default and its consequences under this Indenture except a continuing Default or Event of Default in the payment of the principal of and premium, if any, or interest, if any, on any Security of such series. The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Persons entitled to waive any past default hereunder. If a record date is fixed, the Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to waive any default hereunder, whether or not such Holders remain Holders after such record date. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 5.05 . *Control by Majority.* With respect to the Securities of any series, the Holders of a majority in aggregate Principal Amount of the then outstanding Securities of that series may 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 it. However, the Trustee may refuse to follow any direction that conflicts with applicable law or this Indenture, that the Trustee in good faith determines may be unduly prejudicial to the rights of other Holders of that series or that may cause the Trustee any potential liability, claims or expense without the prior receipt of a reasonably satisfactory indemnity (as determined by the Trustee in its sole discretion) from Holders making such direction. The Trustee may take any other action which it deems proper which is not inconsistent with any such direction.

Upon receipt by the Trustee of any such direction with respect to the Securities of such series, a record date shall automatically and without any other action by any Person be set for determining the Holders of outstanding Securities of such series entitled to join in such direction, which record date shall be the close of business on the day the Trustee receives such direction. The Holders of outstanding Securities of such series on such record date (or their duly appointed agents), and only such Persons, shall be entitled to join in such direction, whether or not such Holders remain Holders after such record date.

Section 5.06 . *Limitation on Suits.* No Holder of any Security of any series shall have the right to institute any proceeding with respect to this Indenture, or for the appointment of a receiver or a trustee, or for any other remedy thereunder, unless:

- (a) such Holder has previously given to the Trustee written notice of a continuing Event of Default with respect to the Securities of such series;
- (b) the Holders of at least 25% in aggregate Principal Amount of the outstanding Securities of such series have made written request of, and such Holder or Holders have offered an indemnity reasonably satisfactory to, the Trustee to take action because of the Event of Default; and



(c) the Trustee has failed to institute such proceeding, and has not received from the Holders of a majority in aggregate Principal Amount of the outstanding Securities of such series a direction inconsistent with such request, within 90 days after such notice, request and offer.

The limitations in this Section 5.06 shall not apply to a suit instituted by a Holder of Securities for the enforcement of payment of the principal of or premium, if any, or interest, if any, on such Securities on or after the applicable due date specified in such Securities (after giving effect to any applicable grace period specified in the related supplemental indenture).

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

Section 5.07 . *Rights of Holders to Receive Payment.* Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of and premium, if any, and interest, if any, on any Security, on or after the respective due dates expressed in such Security, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of the Holder.

Section 5.08 . *Collection Suit by Trustee.* If an Event of Default specified in Section 5.01 hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company (or any other obligor upon the Securities) for the whole amount of principal and premium, if any, and interest, if any, remaining unpaid on any Securities of such series and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover amounts due the Trustee under Section 6.07 hereof, including the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 5.09 . *Trustee May File Proofs of Claim.* The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Securities), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the

Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties which the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities of any series or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 5.10 . *Priorities.* If the Trustee collects any money pursuant to this Article 5, it shall pay out the money in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 6.07, including payment of all compensation, expense and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders for amounts due and unpaid on the Securities of any series for principal and premium, if any, and interest, if any, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities of such series for principal and premium, if any, and interest, if any, respectively; and

Third: to the Company or to such party as a court of competent jurisdiction shall direct. The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 5.10 upon five Business Days prior notice to the Company.

Section 5.11 . *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.11 does not apply to a suit by the Trustee, a suit by a Holder of Securities of the affected series pursuant to Section 5.07 hereof, a suit by Holders of more than 10% in aggregate Principal Amount of the then outstanding Securities of any series in the case of any suit relating to or arising under Section 5.01(a), 5.01(b), 5.01(c) or 5.01(d), or a suit by Holders of more than 10% in aggregate Principal Amount of all of the then outstanding Securities in the case of any suit relating to or arising under Section 5.01(e) or 5.01(f).

Section 5.12 . *Restoration of Rights and Remedies.* If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

Section 5.13 . *Rights and Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.09, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.14 . *Delay or Omission Not Waiver.* No delay or omission of the Trustee or of any Holder of Securities of any series to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 5 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

## **ARTICLE 6**

### **CONCERNING THE TRUSTEE**

Section 6.01 . *Duties and Responsibilities of the Trustee; During Default: Prior to Default.* The Trustee, with respect to the Securities of any series, prior to the occurrence of an Event of Default with respect to the Securities of such series and after the curing or waiving of all Events of Default with respect to the Securities of such series which may have occurred, undertakes to perform such duties and only such duties with respect to such series as are specifically set forth in this Indenture. In case an Event of Default with respect to the Securities of a series has occurred (and is continuing which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture with respect to such series, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

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

(a) 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 permissive rights of the Trustee hereunder shall not constitute performance duties;

(b) in the absence of bad faith 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 statements, certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such statements, certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the form requirements of this Indenture;

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

(d) 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 direction of the Holders given as provided in Section 5.05 or otherwise exercising any trust or power conferred upon the Trustee under this Indenture.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any potential or actual liability (financial or otherwise), loss or expense in the performance of any of its duties or in the exercise of any of its rights or powers, if there shall be reasonable ground for believing that the repayment of such funds or adequate indemnity against such liability is not reasonably assured to it. This Section 6.01 is in furtherance of and subject to Sections 315 and 316 of the Trust Indenture Act.

Whether or not therein expressly so 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 of this Article 6.

Section 6.02 . *Certain Rights of the Trustee*. In furtherance of and subject to the Trust Indenture Act, and subject to Section 6.01:

(a) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, Officer's Certificate, Opinion of

Counsel or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note, coupon, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); 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 Company;

(c) the Trustee may consult with counsel of its selection and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith 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 Holders of the Securities of any series pursuant to the provisions of this Indenture, unless such Holders shall have offered and provided to the Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred therein or thereby; but nothing herein contained shall, however, relieve the Trustee of the obligation, upon the occurrence of an Event of Default (which has not been cured or waived) with respect to the Securities of any series, to exercise such of the rights and powers vested in it by this Indenture, and to use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs;

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

(f) 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, consent, order, approval, appraisal, bond, debenture, note, coupon, security, or other paper or document unless requested in writing so to do by the Holders of not less than a majority in aggregate Principal Amount of all the Securities then outstanding; *provided* that, if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require indemnity satisfactory to it against such expenses or liabilities as a condition to proceeding; the reasonable expenses of every such examination shall be paid by the Company;

(g) 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 not regularly in its employ and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent or attorney appointed with due care by it hereunder;

(h) the rights, privileges, protections, immunities and benefits given to the Trustee under this Indenture, 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 to each agent, custodian and other Person employed to act hereunder;

(i) the Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture; and

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

(k) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services (it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practice in the banking industry to resume performance as soon as practicable under the circumstances).

(l) In no event shall the Trustee be responsible or liable for special or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action, unless such loss or damage is determined by a court of competent jurisdiction to have been caused by the Trustee's own fraud or willful misconduct.

Section 6.03 . *Trustee Not Responsible for Recitals, Disposition of Securities or Application of Proceeds Thereof.* The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representation as to the

validity or sufficiency of this Indenture or of the Securities, except that the Trustee represents, that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder and that the statements made by it in a Statement of Eligibility on Form T-1 supplied to the Company, are true and accurate, subject to the qualifications set forth therein. The Trustee shall not be liable or accountable in any manner for the use or application by the Company of any of the Securities or of the proceeds thereof.

Section 6.04 . *Trustee and Agents May Hold Securities; Collections, Etc.* The Trustee or any of its affiliates or any agent of the Company or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities, subject to Sections 6.10 and 6.13 with the same rights it would have if it were not the Trustee or such agent and may otherwise deal with the Company and receive, collect, hold and retain collections from the Company with the same rights it would have if it were not the Trustee or such agent.

Section 6.05 . *Moneys Held by Trustee.* All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by mandatory provisions of law. Neither the Trustee nor any agent of the Company or the Trustee shall be under any liability for interest on any moneys received by it hereunder, except as otherwise agreed with the Company.

Section 6.06 . *Notice of Default.* If any Default or any Event of Default occurs and is continuing with respect to the Securities of any series and if such Default or Event of Default is actually known to a Responsible Officer of the Trustee, the Trustee shall mail to each Holder of Securities of such series in the manner and to the extent provided in Trust Indenture Act Section 313(c) notice of the Default or Event of Default (“ **Notice of Default** ”) within 90 days after it occurs, unless such Default or Event of Default has been cured; *provided, however* , that, except in the case of a default in the payment of the principal of or premium, if any, or interest, if any, on any Security of such series, the Trustee shall be protected in withholding such notice if and so long as a committee of Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interest of the Holders of Securities of such series.

Section 6.07 . *Compensation and Indemnification of Trustee and Its Prior Claim.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as shall be agreed in writing between the Company and the Trustee (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and the Company covenants and agrees to pay or reimburse the Trustee and each predecessor Trustee upon its request for all expenses, disbursements and advances incurred or made by or on behalf of it in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons not regularly in

its employ) except any such expense, disbursement or advance as shall have been caused by its own negligence, gross negligence or bad faith. The Company also covenants to indemnify the Trustee and each predecessor Trustee for, and to hold it harmless against, any and all loss, liability, damage, claim or expense, including taxes (other than taxes based on the income of the Trustee) incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder and its duties hereunder, including without limitation the costs and expenses of defending itself against or investigating any claim (whether asserted by the Company, a Holder or any other Person). The obligations of the Company under this Section to compensate and indemnify the Trustee and each predecessor Trustee and to pay or reimburse the Trustee and each predecessor Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture. Such financial obligations of the Company identified in this Section 6.07 shall be a Lien senior to that of the Securities of each series upon all property and funds held or collected by the Trustee.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.01(e) or Section 5.01(f), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or State bankruptcy, insolvency or other similar law.

Section 6.08 . *Right of Trustee to Rely on Officer's Certificate, Etc.* Subject to Sections 6.01 and 6.02, whenever in the administration of the trusts of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 6.09 . *Persons Eligible for Appointment as Trustee.* The Trustee hereunder shall at all times be a corporation, national association or other appropriate entity having a combined capital and surplus of at least \$100,000,000, and which is eligible in accordance with the provisions of Section 310 (a) of the Trust Indenture Act. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of a Federal, State or District of Columbia supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.



Section 6.10 . *Resignation and Removal; Appointment of Successor Trustee.* (a) The Trustee may at any time resign with respect to the Securities of one or more series by giving written notice of resignation to the Company and to the Holders of Securities of such series, such notice to the Holders to be given by mailing (by first class mail) the same within 30 days after such notice is given to the Company. Upon receiving such notice of resignation, the Company shall promptly appoint a successor Trustee by written instrument in duplicate, executed by authority of the Board of Directors of the Company, 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 within 60 days after the mailing of such notice of resignation, the resigning trustee may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee, or any Securityholder of the affected series who has been a bona fide holder of a Security or Securities of the affected series for at least six months may, 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 the provisions of Section 310(b) of the Trust Indenture Act, after written request therefor by the Company or by any Securityholder who has been a bona fide holder of a Security or Securities for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 6.09 and shall fail to resign after written request therefor by the Company or by any such Securityholder; or

(iii) the Trustee shall become incapable of acting, or shall be adjudged as bankrupt or insolvent, or a receiver or liquidator 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 Company may remove the Trustee and appoint a successor Trustee by written instrument, in duplicate, executed by order of the Board of Directors of the Company, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor Trustee, or, subject to Section 315(e) of the Trust Indenture Act, any Securityholder who has been a bona fide holder of a Security or Securities 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. 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) The Holders of a majority in aggregate Principal Amount of the Securities of any series at the time outstanding may at any time remove the Trustee for that series and appoint a successor Trustee by delivering to the Trustee so removed, to the successor Trustee so appointed and to the Company the evidence provided for in Section 7.01 of the action in that regard taken by the Securityholders.

If no successor Trustee shall have been so appointed and have accepted appointment within 60 days after the mailing of such notice of removal, the Company may appoint a successor Trustee by written instrument, in duplicate, executed by order of the Board of Directors of the Company, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor Trustee. If no successor Trustee shall have been so appointed and have accepted appointment within 90 days after the mailing of the initial notice of removal from the Holders of a majority in aggregate Principal Amount of the Securities of the affected series at the time outstanding, the Trustee being removed may petition, at the expense of the Company, any court of competent jurisdiction 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.

(d) Any resignation or removal of the Trustee and any appointment of a successor Trustee pursuant to any of the provisions of this Section 6.10 shall become effective upon acceptance of appointment by the successor Trustee as provided in Section 6.11.

(e) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series by mailing written notice of such event by first-class mail, postage prepaid, to all Holders of Securities of such series as their names and addresses appear in the Security Register. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 6.11 . *Acceptance of Appointment by Successor.* (a) In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such Successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in Section 6.11(a) or 6.11(b), as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under the Trust Indenture Act.

Section 6.12 . *Merger, Conversion, Consolidation or Succession to Business of Trustee.* Any corporation or national association into which the Trustee may be merged or converted or with which it may be consolidated, or to which the Trustee's assets may be sold, or any corporation or national association resulting from any merger, conversion, consolidation or sale to which the Trustee shall be a party or by which the Trustee's property may be bound, or any corporation or national association succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee

hereunder, *provided* that such entity shall be eligible under the provisions of Section 6.09, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor Trustee and deliver such Securities so authenticated; and, in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor Trustee; and in all such cases such certificate shall have the full force that it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have; *provided*, that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Securities in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 6.13 . *Preferential Collection of Claims.* If the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of the Company (or any other obligor on the Securities), the Trustee shall be subject to the provisions of Section 311 of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor). For purposes of Section 311(b) (4) and (6) of the Trust Indenture Act, the following terms shall have the following meanings:

(a) “cash transaction” means any transaction in which full payment for goods or securities sold is made within seven days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand; and

(b) “self-liquidating paper” means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Company for the purpose of financing the purchase, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise; and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, *provided* the security is received by the Trustee simultaneously with the creation of the creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

Section 6.14 . *Communications with the Trustee.* Any and all notices, certificates, opinions or filings with the Commission required or permitted to be provided by the Company to the Trustee under this Indenture shall be in writing and shall be personally delivered, sent via an internationally recognized overnight

delivery service or sent by facsimile or electronic transmission to the address or telecopy number of the Corporate Trust Office.

**ARTICLE 7**  
**CONCERNING THE HOLDERS**

Section 7.01 . *Evidence of Action Taken by Holders.* Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Securityholders of any series may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders in person or by agent duly appointed in writing and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee. Proof of execution of any instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Sections 6.01 and 6.02) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Article 7.

Section 7.02 . *Proof of Execution of Instruments and of Holding of Securities; Record Date.* Subject to Sections 6.01 and 6.02, the execution of any instrument by a Securityholder or its agent or proxy may be proved 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 Securities shall be proved by the Security Register or by a certificate of the Registrar thereof. The Company may set a record date for purposes of determining the identity of Holders of Securities entitled to vote or consent to any action referred to in Section 7.01, which record date may be set at any time or from time to time by notice to the Trustee, for any date or dates (in the case of any adjournment or resolicitation) not more than 90 days nor less than 20 days prior to the proposed date of such vote or consent, and thereafter, notwithstanding any other provisions hereof, only Holders of Securities of record on such record date shall be entitled to so vote or give such consent or to withdraw such vote or consent.

Section 7.03 . *Who May Be Deemed Owners of Securities.* The Company, the Trustee, any Paying Agent and any Security Registrar may deem and treat the Person in whose name any Security of any series shall be registered in the Security Register on the applicable record date as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of and premium, if any, and interest, if any, on such Security and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Security Registrar shall be affected by any notice to the contrary. All such payments so made to, or upon the order of, any Holders shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability of moneys payable upon any such Security.

Section 7.04 . *Securities Owned by Company Deemed Not Outstanding.* In determining whether the Holders of the requisite aggregate Principal Amount of Securities of any series have concurred in any direction, consent or waiver under this Indenture, Securities of such series which are owned by the Company or any other obligor on the Securities of such series or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities of such series shall be disregarded and deemed not to be outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver only Securities which a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities. In case of a dispute as to such right, the advice of counsel shall be full protection in respect of any decision made by the Trustee in accordance with such advice. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Securities of any series, if any, known by the Company to be owned or held by or for the account of any of the above-described persons; and, subject to Sections 6.01 and 6.02, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Securities of such series not listed therein are outstanding for the purpose of any such determination.

Section 7.05 . *Record Date for Action by Securityholders.* Whenever in this Indenture it is provided that Holders of a specified percentage in aggregate Principal Amount of the Securities of any series may take any action (including the making of any demand or request, the giving of any direction, notice, consent or waiver or the taking of any other action), the Company, pursuant to a resolution of its Board of Directors, or the Holders of at least 10% in aggregate Principal Amount of the Securities of such series then outstanding, may request the Trustee to fix a record date for determining Securityholders entitled to notice of and to take any such action. In case the Company or the Holders of Securities of such series in the amount above specified shall desire to request Securityholders of such series to take any action and shall request the Trustee to fix a record date with respect thereto by written notice setting forth in reasonable detail the Securityholder action to be requested; the Trustee shall promptly (but in any event within five days of receipt of such request) fix a record date that shall be a Business Day not less than 15 nor more than 20 days after the date on which the Trustee receives such request. If the Trustee shall fail to fix a record date as hereinabove provided, then the Company or the Holders of Securities of such series in the amount above specified may fix the same by mailing written notice

thereof (the record date so fixed to be a Business Day not less than 15 nor more than 20 days after the date on which such written notice shall be given) to the Trustee. If a record date is fixed according to this Section 7.05, only Persons shown as Securityholders of such series on the registration books for the Company at the close of business on the record date so fixed shall be entitled to take the requested action and the taking of such action by the Holders of Securities of such series on the record date of the required percentage of the aggregate Principal Amount of the Securities shall be binding on all Securityholders of such series; *provided* that the taking of the requested action by the Holders of Securities of such series on the record date of the percentage in aggregate Principal Amount of the Securities in connection with such action shall have been evidenced to the Trustee, as provided in Section 7.01, not later than 180 days after such record date.

Section 7.06 . *Right of Revocation of Action Taken.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 7.01, of the taking of any action by the Holders of the percentage in aggregate Principal Amount of the Securities of any series specified in this Indenture in connection with such action, any Holder of a Security the serial number of which is shown by the evidence to be included among the serial numbers of the Securities of the series the Holders of which have consented to such action may, by filing written notice at the Corporate Trust Office and upon proof of holding as provided in this Article 7, revoke such action so far as concerns such Security. Except as aforesaid any such action taken by the Holder of any Security shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Security and of any Securities issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon any such Security. Notwithstanding the foregoing, any action taken by the Holders of the percentage in aggregate Principal Amount of the Securities of any series specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the Holders of all the Securities of such series, including without limitation, any Holder that revoked its consent in accordance with this Section.

## **ARTICLE 8**

### **AMENDMENTS, SUPPLEMENTS AND WAIVERS**

Section 8.01 . *Modifications and Amendments With Consent of Holders.* The Company may modify or amend this Indenture with respect to a series of Securities then outstanding with the consent of the Holders of at least a majority in aggregate Principal Amount of such series of Securities; *provided* , *however* , that no such modification or amendment may, without the consent of the Holder of each outstanding Security of such series affected thereby:

- (a) change the Stated Maturity of or the principal of or premium, if any, or interest, if any, on such series of Securities;
- (b) reduce the Principal Amount of or premium, if any, or interest, if any, on such series of Securities or payable upon acceleration of such series of Securities following an Event of Default;
- (c) adversely affect any right of repayment at the Holder's option;
- (d) change the place or currency of payment of principal of or premium, if any, or interest, if any, on such series of Securities;
- (e) modify such series of Securities to subordinate such series of Securities to other Indebtedness;
- (f) impair the right to institute suit for the enforcement of any payment on or with respect to such series of Securities;
- (g) reduce the percentage of aggregate Principal Amount of outstanding Securities of such series necessary to modify or amend this Indenture with respect to such series of Securities; or
- (h) reduce the percentage of aggregate Principal Amount of outstanding Securities of such series necessary for waiver of compliance with certain provisions of this Indenture with respect to such series of Securities or for waiver of certain past defaults with respect to such series of Securities.

The Holders of a majority in aggregate Principal Amount of the outstanding Securities of a series affected by an existing Default, Event of Default or compliance with any provision of this Indenture or the Securities of such series, may waive such Default, Event of Default or compliance with any provision of this Indenture or the Securities of such series, except a Default in the payment of principal or interest that has not been cured.

Upon the request of the Company accompanied by Board Resolution authorizing the execution of a supplemental indenture providing for any such modification, amendment or waiver, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders as aforesaid, and upon receipt by the Trustee of the documents described in Section 8.04 hereof, the Trustee shall join with the Company 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 Holders under this Section 8.01 to approve the particular form of any proposed supplemental indenture,



amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 8.01 becomes effective, the Company shall mail to the Holders of the Securities of a series affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture, amendment or waiver. Subject to Sections 5.04 and 5.07 hereof, the Holders of a majority in aggregate Principal Amount of a series of Securities then outstanding affected may waive compliance in a particular instance by the Company with any provision of this Indenture with respect to such series or such Securities.

Section 8.02 . *Amendments to or Supplemental Indentures Without Consent of Holders.* The Company may amend or supplement this Indenture without notice to or the consent of any Holder, in order, among other things, to:

- (a) cure any ambiguity, defect or inconsistency in this Indenture, *provided* that such amendments or supplements shall not adversely affect the interests of the Holders in any material respect;
- (b) comply with any requirements of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act;
- (c) evidence and provide for the acceptance of appointments under this Indenture with respect to the Securities by a successor Trustee;
- (d) evidence that another Person has succeeded the Company and assumed the Company's covenants and obligations under the Securities and this Indenture;
- (e) add covenants for the benefit of the Holders, or to surrender any right or power conferred on the Company under this Indenture;
- (f) add additional Events of Default for the benefit of the Holders of the Securities;
- (g) pledge property to the Trustee as security for the Securities;
- (h) establish the form and terms of any series of Securities as permitted by this Indenture; and
- (i) make any other change that does not adversely affect the interests of the Holders in any material respect.

Upon the request of the Company accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and upon receipt

by the Trustee of the documents described in Section 8.04 hereof, the Trustee shall join with the Company in the execution of any supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations which may be therein contained, but the Trustee may, in its discretion, but shall not be obligated to enter into such supplemental indenture which affects its own rights, duties or immunities under this Indenture or otherwise.

Section 8.03 . *Effect of Supplemental Indenture.* Upon the execution of any supplemental indenture pursuant to the provisions of this Article 8, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders of each series affected 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 8.04 . *Documents to Be Given to Trustee; Compliance with the Trust Indenture Act.* The Trustee, subject to the provisions of Sections 6.01 and 6.02, shall be provided with an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any such supplemental indenture complies with the applicable provisions of this Indenture. Every such supplemental indenture shall comply with the Trust Indenture Act.

Section 8.05 . *Notation on Securities in Respect of Supplemental Indentures.* Securities authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 8 may bear a notation satisfactory to the Trustee as to form (but not as to substance) as to any matter provided for by such supplemental indenture. If the Company or the Trustee shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Board of Directors of the Company, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Company, authenticated by the Trustee and delivered in exchange for the Securities of such series then outstanding.

## **ARTICLE 9**

### **MERGER, CONSOLIDATION OR SALE OR CONVEYANCE OF ASSETS**

Section 9.01 . *When the Company May Merge, Etc.* The Company shall not consolidate or merge with or into any other Person or convey or transfer its properties and assets substantially as an entirety to any Person, unless:

(a) immediately after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing;

(b) the successor Person (if not the Company) shall be a Person organized and existing under the laws of the United States, any State thereof or the District of Columbia, and shall expressly assume, by a supplemental indenture reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and premium, if any, and interest, if any, on the Securities and the performance or observance of every covenant in this Indenture on the part of the Company to be performed or observed; and

(c) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that the consolidation, merger, conveyance or transfer and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with Section 9.01(a) and 9.01(b) above and all other conditions precedent specified in this Indenture relating to such consolidation, merger, conveyance or transfer have been complied with.

Section 9.02 . *Successor Person Substituted.* In the case of any consolidation, merger, conveyance or transfer, in which the Company is not the successor Person, or any sale, assignment, conveyance, transfer or other disposition of all or substantially all of the assets of the Company in accordance with Section 9.01 hereof, the successor Person formed by such consolidation or into or with which the Company is merged or to which such sale, assignment, conveyance, transfer or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, conveyance, transfer or other disposition, the provisions of this Indenture referring to the "Company" shall refer instead to the successor Person), and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein.

In case of any such consolidation, merger, sale or conveyance such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate. Notwithstanding the foregoing, (i) a consolidation or merger by the Company with or into, or (ii) the sale, assignment, conveyance, transfer or other disposition by the Company of all or substantially all of the property or assets of the Company to, one or more of its Subsidiaries shall not relieve the Company from its obligations under this Indenture and the Securities.

Section 9.03 . *Opinion of Counsel to Trustee.* The Trustee, subject to the provisions of Sections 6.01 and 6.02, shall be provided with an Opinion of Counsel as conclusive evidence that any such consolidation, merger, conveyance,

sale, transfer, lease, exchange or other disposition complies with the applicable provisions of this Indenture.

**ARTICLE 10**  
**REDEMPTION OF SECURITIES**

Section 10.01 . *Applicability of Article.* Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 3.01 for Securities of any series) in accordance with this Article 10.

Section 10.02 . *Notice of Redemption; Partial Redemptions.* Notice of redemption to the Holders of Securities of any series to be redeemed as a whole or in part shall be given by mailing notice of such redemption by first class mail, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to such Holders of Securities at their last addresses as they shall appear upon the Security Register. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives the notice. Failure to give notice by mail, or any defect in the notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

The notice of redemption to each such Holder shall identify the Securities to be redeemed (including CUSIP or ISIN numbers) and shall specify the Principal Amount of each Security held by such Holder to be redeemed, the date fixed for redemption, the redemption price, the place or places of payment, that payment will be made upon presentation and surrender of such Securities, that interest accrued to the date fixed for redemption will be paid as specified in such notice and that on and after such date interest thereon or on the portions thereof to be redeemed will cease to accrue. In case any Security 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 date fixed for redemption, upon surrender of such Security, a new Security or Securities in Principal Amount equal to the unredeemed portion thereof will be issued.

The notice of redemption of Securities of any series to be redeemed at the option of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company.

No later than 10:00 a.m. (New York City time) on the redemption date specified in the notice of redemption given as provided in this Section 10.02, the Company will deposit with the Trustee or with one or more Paying Agents (or, if the Company is acting as Paying Agent, set aside, segregate and hold in trust) an amount of money sufficient to redeem on the redemption date all the Securities of a series so called for redemption at the appropriate redemption price, together

with accrued interest to the date fixed for redemption. The Company will deliver to the Trustee at least 15 days prior to the date fixed for the giving of the notice of redemption an Officer's Certificate stating the aggregate Principal Amount of Securities of such series to be redeemed.

If less than all the Securities of a series are to be redeemed, the Trustee shall select, either pro rata, by lot or in accordance with any method customarily used by the Trustee or the Depositary, Securities to be redeemed in whole or in part. Securities may be redeemed in part only in denominations equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof. The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the Principal Amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the Principal Amount of such Security which has been or is to be redeemed.

Section 10.03 . *Payment of Securities Called for Redemption.* If notice of redemption has been given as above provided, the Securities or portions of Securities specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest, if any, accrued to the date fixed for redemption, and on and after such date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest, if any, accrued to such date) interest, if any, on the Securities or portions of Securities so called for redemption shall cease to accrue and, except as provided in Sections 6.05 and 11.06, such Securities shall cease from and after the date fixed for redemption to be entitled to any benefit or security under this Indenture, and the Holders thereof shall have no right in respect of such Securities except the right to receive the redemption price thereof and unpaid interest, if any, to the date fixed for redemption. On presentation and surrender of such Securities at a Payment Office specified in such notice, such Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest, if any, accrued thereon to the date fixed for redemption; *provided* that any payment of interest becoming due on the date fixed for redemption shall be payable to the holders of such Securities registered as such on the relevant Regular Record Date subject to the terms and provisions of Section 3.05 hereof.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest from the date fixed for redemption at the applicable rate borne by the Security.

Upon presentation of any Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and make available for delivery to or on the order of the Holder thereof, at the expense of the Company, a new

Security or Securities of authorized denominations, in Principal Amount equal to the unredeemed portion of the Security so presented.

**ARTICLE 11**  
DEFEASANCE AND COVENANT DEFEASANCE

Section 11.01 . *Applicability of the Article; Company's Option to Effect Defeasance or Covenant Defeasance.* Unless pursuant to Section 3.01 provision is made for the inapplicability of either or both of (a) defeasance of the Securities of a series under Section 11.02 or (b) covenant defeasance of the Securities of a series under Section 11.03, then the provisions of such Section or Sections, as the case may be, together with the other provisions of this Article 11, shall be applicable to the Securities of such series, and the Company may, at its option, by resolution of its Board of Directors, at any time, elect to have either Section 11.02 or Section 11.03 applied to the outstanding Securities of a series upon compliance with the conditions set forth below in this Article 11.

Section 11.02 . *Full Defeasance and Discharge.* Upon the Company's exercise of the option provided under Section 11.01 hereof to defease the outstanding Securities of a particular series under this Section 11.02, the Company shall be deemed to have been discharged from its obligations with respect to such outstanding Securities on the date the conditions set forth below are satisfied (hereinafter, "**Full Defeasance**"). For this purpose, such Full Defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Securities of such series, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 11.05 hereof and the other Sections of this Indenture referred to in clauses (i) and (ii) of this Section 11.02, and to have satisfied all its other obligations under such Securities and this Indenture (and the Trustee, on demand of and at the expense of the Company shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of outstanding Securities of such series to receive solely from the trust fund described in Section 11.04 hereof, and as more fully set forth in such Section, payments in respect of the principal of and premium, if any, and interest, if any, on such Securities when such payments are due, (ii) the Company's obligations with respect to such Securities under Sections 3.06, 3.07, 3.08(a), 3.09, 3.11, and 11.05 hereof, (iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder, including, without limitation, the Trustee's rights under Section 6.07 hereof, and the Company's obligations in connection therewith and with this Article 11. Subject to compliance with this Article 11, the Company may exercise its option under this Section 11.02 notwithstanding the prior exercise of its option under Section 11.03 hereof with respect to the Securities of such series.

Section 11.03 . *Covenant Defeasance*. Upon the Company's exercise of the option provided under Section 11.01 hereof to obtain a covenant defeasance with respect to the outstanding Securities of a particular series under this Section 11.03, the Company shall be released from its obligations under the covenants contained in Article 4 (other than Sections 4.01, 4.05, 4.06, 4.08 and 4.09), Section 8.01, Section 8.02 and Section 9.01 hereof and the covenants contained in any supplemental indenture applicable to such series, with respect to the outstanding Securities of such series on and after the date the conditions set forth below are satisfied (hereinafter, "**Covenant Defeasance**"), and the Securities of such series shall thereafter be deemed not outstanding for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed outstanding for all other purposes hereunder. For this purpose, such Covenant Defeasance means that, with respect to the outstanding Securities of such series, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 5.01(c) with respect to outstanding Securities of such series, but, except as specified above, the remainder of this Indenture and of the Securities of such series shall be unaffected thereby.

Section 11.04 . *Conditions to Legal or Covenant Defeasance*. The following shall be the conditions to the application of either Section 11.02 or Section 11.03 hereof to the outstanding Securities of a particular series:

(a) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 6.10 who shall agree to comply with the provisions of this Article 11 applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities, (i) an amount in cash (in such currency, currencies or currency unit in which such Securities and any related coupons are then specified as payable at Stated Maturity), or (ii) non-callable Government Securities that through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, cash in U.S. Dollars in an amount, or (iii) a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge the principal of and premium, if any, and interest, if any, on such outstanding Securities on the Stated Maturity of such principal or installment of principal, or interest or premium, if any.

(b) In the case of an election under Section 11.02 hereof, the Company shall have delivered to the Trustee an Opinion of Counsel confirming that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (ii) since the date hereof, there has been a change in the applicable 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 Securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such Full Defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Full Defeasance had not occurred.

(c) In the case of an election under Section 11.03 hereof, the Company shall have delivered to the Trustee an Opinion of Counsel confirming that the Holders of the outstanding Securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such Covenant Defeasance and will be subject to 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 with respect to the Securities of such series shall have occurred and be continuing on the date of such deposit or, insofar as Section 5.01(e) or Section 5.01(f) hereof is concerned, at any time in the period ending on the 124th day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until the expiration of such period).

(e) Such Full Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under any material agreement or instrument (other than this Indenture) to which the Company is a party or by which the Company is bound (other than a breach, violation or default resulting from the borrowing of funds to be applied to such deposit).

(f) The Company shall have delivered to the Trustee an Officer's Certificate stating that the deposit made by the Company pursuant to its election under Section 11.02 or 11.03 hereof was not made by the Company with the intent of preferring the Holders of the affected Securities over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding creditors of the Company.

(g) Such Full Defeasance or Covenant Defeasance shall be effected in compliance with any additional terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 3.01.

(h) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to either the Full Defeasance under Section 11.02 hereof or



the Covenant Defeasance under Section 11.03 hereof (as the case may be) have been complied with as contemplated by this Section 11.04.

Section 11.05 . *Deposited Money and Government Securities to Be Held in Trust; Other Miscellaneous Provisions.* Subject to Section 11.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee pursuant to Section 11.04 hereof in respect of the outstanding Securities of a particular series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Securities of all sums due and to become due thereon in respect of principal and premium, if any, and interest, if any, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 11.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge that by law is for the account of the Holders of the outstanding Securities of such series.

Anything in this Article 11 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon the Company's request any money or non-callable Government Securities held by it as provided in Section 11.04 hereof with respect to the Securities of any series 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 11.04(a) hereof), are in excess of the amount thereof which would then be required to be deposited to effect an equivalent Full Defeasance or Covenant Defeasance.

Section 11.06 . *Repayment to the Company.* Subject to any applicable abandoned property or escheat law, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of and premium, if any, and interest, if any, on any Security and remaining unclaimed for two years after such principal, or interest or premium, if any, has become due and payable shall be paid to the Company on its written request or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however* , that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company 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 shall 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 Company.

Section 11.07 . *Reinstatement.* If the Trustee or Paying Agent is unable to apply any U.S. Dollars or non-callable Government Securities in accordance with Section 11.02 or 11.03 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 Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.02 or 11.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 11.05 or 11.06 hereof, as the case may be; *provided, however* , that, if the Company makes any payment of principal or of interest or premium, if any, on any Security following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Security to receive such payment from the money held by the Trustee or Paying Agent.

## ARTICLE 12 SATISFACTION AND DISCHARGE

Section 12.01 . *Satisfaction and Discharge of Indenture.* This Indenture will cease to be of further effect, and the Company will be deemed to have satisfied and discharged this Indenture, with respect to a series of Securities (except, as to any surviving rights of registration of transfer, exchange or conversion of Securities of such series herein expressly provided for or in the form of Security for such series and any rights to receive payment of interest thereon), and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when the following conditions have been satisfied:

- (a) either
  - (i) all Securities of such series theretofore authenticated and delivered (other than (A) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.09, and (B) Securities for whose payment money has theretofore been (x) deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 4.06(c) or (y) paid to any State of the United States or the District of Columbia pursuant to its unclaimed property or similar laws) have been delivered to the Trustee for cancellation; or
  - (ii) all such Securities not theretofore delivered to the Trustee for cancellation
    - (A) have become due and payable, or

(B) will become due and payable at their Stated Maturity within one year, or

(C) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name and at the expense of the Company,

and the Company, in, the case of (A), (B) or (C) above, has deposited or caused to be deposited with the Trustee, as trust funds in trust for the purpose, money in the amount in the currency or currency units in which the Securities of such series are payable, sufficient to pay and discharge the entire Indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and premium, if any, and interest, if any, to the date of such deposit (in the case of Securities which have become due and payable), or to the Stated Maturity or redemption date, as the case may be;

(b) the Company has paid or caused to be paid all other sums payable under this Indenture with respect to such Securities; and

(c) the Company has delivered to the Trustee an Officer's Certificate and Opinion of Counsel, each stating that all the conditions provided for in this Section 12.01 have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture the obligations of the Company to the Trustee under Section 6.07 and, if money shall have been deposited with the Trustee pursuant to Section 12.01(a)(ii), the obligations of the Trustee under Section 12.02 and the last paragraph of Section 4.06 shall survive such satisfaction and discharge.

Section 12.02 . *Application of Trust Money.* Subject to the provisions of the last paragraph of Section 4.06, all money deposited with the Trustee pursuant to Section 12.01 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent), as the Trustee may determine, to the Persons entitled thereto, of the principal and premium, if any, and interest, if any, for whose payment such money has been deposited with the Trustee.

### **ARTICLE 13** **HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY**

Section 13.01 . *Company to Furnish Trustee Names and Addresses of Holders.* The Company will furnish or cause to be furnished to the Trustee:

(a) semi-annually, not later than 10 days after the Regular Record Date for each series of Securities, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities as of such Regular Record Date (unless the Trustee has such information), or if there is no Regular Record Date for interest for such series of Securities, semi-annually, upon such dates as are set forth in the Board Resolution or indenture supplemental hereto authorizing such series, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

*provided, however*, that so long as the Trustee is the Registrar, no such list shall be required to be furnished.

Section 13.02. *Preservation of Information; Communications to Holders.* (a) The Trustee shall preserve, in as current form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 13.01 and the names and addresses of Holders received by the Trustee in its capacity as the Registrar. The Trustee may destroy any list furnished to it as provided in Section 13.01 upon receipt of a new list so furnished.

(a) If three or more Holders (herein referred to as “**applicants**”) apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a Security for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders with respect to their rights under this Indenture or under the Securities and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within five Business Days after the receipt of such application, at its election, either

(i) afford such applicants access to the information preserved at the time by the Trustee in accordance with Section 13.02(a); or

(ii) inform such applicants as to the approximate number of Holders whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Section 13.02(a), and as to the approximate cost of mailing to such Holders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Holder whose name and address appears in the information preserved at the time by the Trustee in accordance with Section 13.02(a) a copy of the form of

proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interest of the Holders or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all objections so sustained have been met and shall enter an order so declaring; the Trustee shall mail copies of such material to all such Holders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with Section 13.02(b), regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 13.02(b).

Section 13.03 . *Reports by the Trustee.* (a) The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each May 15th following the date of this Indenture (commencing May 15, 2009) deliver to Holders a brief report, dated as of such May 15th, which complies with the provisions of such Section 313(a).

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each securities exchange upon which Securities of any series are listed, if any, with the Commission, if such Securities are registered with the Commission, and with the Company. The Company will promptly notify the Trustee when any Securities are listed on any securities exchange and of any delisting thereof.

Section 13.04 . *Reports by the Company.* The Company shall file with the Trustee, within 15 days after it files such annual and quarterly reports, information, documents and other reports with the Commission, copies of its annual report and of the information, documents and other reports (or copies of such portions of any of the foregoing the Commission may by rules and

regulations prescribe) which the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act; *provided* that any such annual and quarterly reports, information, documents and other reports and information filed with the Commission may be provided by the Company to the Trustee electronically. The Company shall comply with the other provisions of the Trust Indenture Act Section 314(a). Delivery of such information, documents and reports 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 Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates). At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon request of Holders and prospective purchasers of Securities thereof, the Company shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports, if any, which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations.

#### **ARTICLE 14** MISCELLANEOUS PROVISIONS

Section 14.01 . *Incorporators, Stockholders, Officers and Directors of Company Exempt from Individual Liability.* No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Security of any series, or because of any indebtedness evidenced thereby, shall be had against any incorporator, as such or against any past, present or future stockholder, officer or director, as such, of the Company or of any successor, either directly or through the Company or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities of such series by the Holders thereof and as part of the consideration for the issue of the Securities of such series.

Section 14.02 . *Provisions of Indenture for the Sole Benefit of Parties and Holders.* Except as set forth in Section 14.09, nothing in this Indenture or in the Securities of any series, expressed or implied, shall give or be construed to give to any Person, other than the parties hereto and their successors and the Holders of the Securities of such series, any legal or equitable right, remedy or claim under this Indenture or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto and their successors and of the Holders of the Securities.

Section 14.03 . *Successors and Assigns of Company Bound by Indenture.* All the covenants, stipulations, promises and agreements in this Indenture contained by or in behalf of the Company shall bind its successors and assigns, whether so expressed or not.

Section 14.04 . *Notices to Holders.* Where this Indenture provides for notice to Holders, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder entitled thereto, at its last address as it appears in the Security Register. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. The Trustee may waive notice to it of any provision herein, and such waiver shall be deemed to be for its convenience and discretion. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case, by reason of the suspension of or irregularities in regular mail service, it shall be impracticable to mail notice to the Company and Securityholders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

Section 14.05 . *Officers, Certificates and Opinions of Counsel; Statements to Be Contained Therein.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

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 (a) a statement that the person making such certificate or opinion has read such covenant or condition, (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based, (c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with and (d) a

statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Any certificate, statement or Opinion of Counsel may be based, insofar as it relates to factual matters or information which is in the possession of the Company, upon the certificate, statement or opinion of or representations by an officer or officers of the Company unless such counsel knows that the certificate, statement or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate, statement or opinion of an officer of the Company or of counsel may be based, in so far as it relates to accounting matters, upon a certificate or opinion of or representations by an accountant or firm of accountants in the employ of the Company unless such officer or counsel knows that the certificate or opinion or representations with respect to the accounting matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate or opinion of any independent firm of public accountants filed with the Trustee shall contain a statement that such firm is independent within the meaning of the Securities Act and the rules and regulations promulgated thereunder.

Section 14.06 . *Payments Due on Saturdays, Sundays and Holidays.* If the date of Maturity of interest on or principal of the Securities of a particular series or the date fixed for redemption of any Security shall not be a Business Day, then payment of interest or principal with respect to such Securities need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date of Maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 14.07 . *Conflict of Any Provision of Indenture with Trust Indenture Act.* If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture by operation of Sections 310 to 317, inclusive, of the Trust Indenture Act (an “**incorporated provision** ”), such incorporated provision shall control.

Section 14.08 . *Governing Law.* This Indenture and the Securities of any series shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 14.09 . *Third Party Beneficiaries.* Holders of Securities of the Company are third party beneficiaries of this Indenture, and any of them (or their representative) shall have the right to enforce the provisions of this Indenture that benefit such Holders.



Section 14.10 . *Counterparts*. This Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

Section 14.11 . *Effect of Headings*. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 14.12 . *Severability*. If any provision hereof shall be held to be invalid, illegal or unenforceable under applicable law, then the remaining provisions hereof shall be construed as though such invalid, illegal or unenforceable provision were not contained herein.

Section 14.13 . *Patriot Act Compliance*. The parties hereto acknowledge that in accordance with Section 326 of the USA Patriot Act the Trustee, like all financial institutions, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens account with Wells Fargo Bank, N.A. 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 USA Patriot Act.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, all as of June 24, 2008.

BEST BUY CO., INC.

By: /s/ Ryan D. Robinson

Name: Ryan D. Robinson

Title: Senior Vice President, U.S. SBU CFO and Treasurer

*Signature Page to Indenture*

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WELLS FARGO BANK, N.A., as Trustee

By: /s/ Jane Y. Schweiger  
Name: Jane Y. Schweiger  
Title: Vice President

*Signature Page to Indenture*

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**BEST BUY CO., INC.**

and

**Wells Fargo Bank, N.A.,**  
as Trustee

**First Supplemental Indenture**

Dated as of June 24, 2008

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6.75% Notes due 2013

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TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE 1 DEFINITIONS	
Section 1.01. Definition Of Terms	2
ARTICLE 2 THE SECURITIES	
Section 2.01. Designation	8
Section 2.02. Principal Amount; Series Treatment for Additional Securities	13
Section 2.03. Form of Securities; Global Form	13
Section 2.04. Restrictive Legends	14
Section 2.05. Transfer Restrictions	15
Section 2.06. Registration, Transfer and Exchange	15
Section 2.07. Restrictions on Transfer and Exchange	18
Section 2.08. Restricted Regulation S Global Notes	19
Section 2.09. Additional Interest	20
ARTICLE 3 COVENANTS	
Section 3.01. Covenants	21
Section 3.02. Offer To Repurchase Upon Change Of Control Triggering Event	21
ARTICLE 4 REDEMPTION OF THE NOTES	
Section 4.01. Optional Redemption by Company	22
Section 4.02. Selection of Notes to Be Redeemed	23
Section 4.03. Redemption Notice	23
Section 4.04. Effect of Redemption Notice	24
Section 4.05. Deposit of Redemption Price	24
Section 4.06. Securities Redeemed in Part	24
ARTICLE 5 DEFEASANCE	
Section 5.01. Defeasance By The Company	24

ARTICLE 6  
MISCELLANEOUS

Section 6.01.	Rule 144A Information; No Resales By Affiliates	25
Section 6.02.	Ratification Of Indenture	25
Section 6.03.	Trustee Not Responsible For Recitals	25
Section 6.04.	Governing Law	26
Section 6.05.	Separability	26
Section 6.06.	Counterparts	26

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## EXHIBITS

EXHIBIT A	Form of Note
EXHIBIT B	Restricted Legend
EXHIBIT C	DTC Legend
EXHIBIT D	Regulation S Certificate
EXHIBIT E	Rule 144A Certificate
EXHIBIT F	Certificate of Beneficial Ownership

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SUPPLEMENTAL INDENTURE (this “**First Supplemental Indenture**”), dated as of June 24, 2008, between Best Buy Co., Inc., a Minnesota corporation (the “**Company**”), and Wells Fargo Bank, N.A., as Trustee (the “**Trustee**”).

**WHEREAS**, the Company and the Trustee executed and delivered an Indenture, dated as of June 24, 2008 (the “**Base Indenture**”), to provide for the issuance by the Company from time to time of Securities (as defined therein) to be issued in one or more series as provided in the Base Indenture;

**WHEREAS**, the issuance and sale of \$500,000,000 aggregate Principal Amount of an initial series of the Securities of the Company under the Indenture, designated as its 6.75% Notes due 2013 (the “**Notes**”) have been authorized by a written consent of the Board of Directors of the Company;

**WHEREAS**, the Company desires to issue \$500,000,000 aggregate Principal Amount of the Notes as of the date hereof;

**WHEREAS**, Sections 3.01 and 8.02 of the Base Indenture provide that the Company, when authorized by a Board Resolution, and the Trustee may amend or supplement the Base Indenture to provide for the issuance of and to establish the form or terms and conditions of Securities of any series as permitted by the Base Indenture;

**WHEREAS**, the Company desires to establish the form, terms and conditions of the Notes;

**WHEREAS**, all things necessary to make this First Supplemental Indenture a valid and legally binding supplement to the Base Indenture according to its terms and the terms of the Base Indenture have been done;

**WHEREAS**, the Company has delivered to the Trustee an Officer’s Certificate pursuant to Section 8.04 of the Base Indenture to the effect that the execution and delivery of the First Supplemental Indenture is authorized or permitted under the Base Indenture and that all conditions precedent provided for in the Base Indenture to the execution and delivery of this First Supplemental Indenture to be complied with by the Company have been complied with; and

**WHEREAS**, the Company has requested that the Trustee execute and deliver this First Supplemental Indenture.

**NOW, THEREFORE:**

In consideration of the premises stated herein and the purchase of the Notes by the Holders thereof, the Company and the Trustee mutually covenant and agree for the equal and proportionate benefit of the respective Holders from time to time of the Notes as follows:

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ARTICLE 1  
DEFINITIONS

Section 1.01 . *Definition Of Terms.* Unless the context otherwise requires:

- (a) a term defined in the Base Indenture has the same meaning when used in this First Supplemental Indenture unless the definition of such term is amended and supplemented pursuant to this First Supplemental Indenture;
- (b) a term defined in this First Supplemental Indenture has the same meaning throughout;
- (c) the singular includes the plural, and *vice versa* ;
- (d) except as otherwise indicated, a reference to a Section or Article is to a Section or Article of this First Supplemental Indenture;
- (e) headings are for convenience of reference only and do not affect interpretation;
- (f) the following terms have the meanings given to them in this Section 1.01(f):

“ **Additional Interest** ” means any increase in Interest set forth in Section 2(e) of the Registration Rights Agreement.

“ **affiliate** ” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, “ **control** ” (including, with correlative meanings, the terms “ **controlling** ,” “ **controlled by** ” and “ **under common control with** ”) with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“ **Certificate of Beneficial Ownership** ” means a certificate substantially in the form of Exhibit F.

“ **Certificated Note** ” means a Note in registered physical form without interest coupons.

“ **Change of Control** ” means the occurrence of any of the following:

- (1) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any person (other than the Company or one of the Company’s Subsidiaries) becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the Company’s outstanding Voting

Stock or other Voting Stock into which the Company's Voting Stock is reclassified, consolidated, exchanged or changed, measured by voting power rather than number of shares; *provided, however*, that a person shall not be deemed beneficial owner of, or to own beneficially any securities, (A) tendered pursuant to a tender or exchange offer made by or on behalf of such person or any of such person's affiliates until such tendered securities are accepted for purchase or exchange thereunder or (B) if such beneficial ownership (i) arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act and (ii) is not also then reportable on Schedule 13D (or any successor schedule) under the Exchange Act;

(2) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the Company's assets and the assets of the Company's Subsidiaries, taken as a whole, to one or more persons (other than to the Company or one of the Company's Subsidiaries); *provided, however*, that none of the circumstances in this clause (2) shall be a Change of Control if the persons that beneficially own the Company's Voting Stock immediately prior to the transaction own, directly or indirectly, shares with a majority of the total voting power of all outstanding voting securities of the surviving or transferee person that are entitled to vote generally in the election of that person's board of directors, managers or trustees immediately after the transaction;

(3) the Company consolidates with, or merges with or into, any person or any such person consolidates with, or merges with or into, the Company, in either case, pursuant to a transaction in which any of the Company's outstanding Voting Stock or the Voting Stock of such other person is converted into or exchanged for cash, securities or other property, other than pursuant to a transaction in which shares of the Company's Voting Stock outstanding immediately prior to the transaction constitute, or are converted into or exchanged for, a majority of the Voting Stock of the surviving person immediately after giving effect to such transaction;

(4) the adoption of a plan relating to the Company's liquidation or dissolution; or

(5) the first day on which a majority of the members of the Company's board of directors are not Continuing Directors.

Notwithstanding the foregoing, a transaction shall not be deemed to involve a Change of Control if (a) the Company becomes a direct or indirect wholly-owned subsidiary of a holding company (*i.e.*, a parent company) and (b)(1) the direct or indirect holders of the Voting Stock of such holding company immediately following that transaction are substantially the same as the holders of the Company's Voting Stock immediately prior to that transaction or (2) immediately following that transaction no person (other than a holding company

satisfying the requirements of this sentence) is the beneficial owner, directly or indirectly, of more than 50% of the Voting Stock of such holding company; *provided* that any series of related transactions shall be treated as a single transaction. The term “person,” as used in this definition, has the meaning given thereto in Section 13(d)(3) of the Exchange Act.

“ **Change of Control Triggering Event** ” means, with respect to the Notes, the occurrence of both a Change of Control and a Rating Event with respect to the Notes.

“ **Clearstream** ” means Clearstream Banking S.A. and its successors.

“ **Comparable Treasury Issue** ” means the United States Treasury security or securities selected by an Independent Investment Banker as having an actual or interpolated maturity comparable to the remaining term of the Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate notes of a comparable maturity to the remaining term of the Notes.

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

“ **Continuing Director** ” means, as of any date of determination, any member of the Company’s Board of Directors who (1) was a member of such Board of Directors on the Issue Date, (2) was nominated for election to such Board of Directors with the approval of a committee of the Board of Directors consisting of a majority of independent Continuing Directors or (3) was nominated for election, elected or appointed to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board of Directors at the time of such nomination, election or appointment (either by a specific vote or by approval of the Company’s proxy statement in which such member was named as a nominee for election as a director, without objection to such nomination).

“ **DTC Legend** ” means the legend set forth in Exhibit C.

“ **Euroclear** ” means Euroclear Bank, S.A./N.V., and its successors or assigns, as operator of the Euroclear System.

“ **Exchange Notes** ” means the debt securities of the Company to be offered to Holders in exchange for the Initial Notes pursuant to the Exchange Offer or otherwise pursuant to a Registration of the Exchange Notes containing terms identical to the Notes for which they are exchanged (except that (i) interest

thereon shall accrue from the last date on which interest was paid on the corresponding series of Notes (unless the Exchange Note is issued after an interest record date and prior to the corresponding Interest Payment Date, in which case interest shall accrue from such Interest Payment Date) or, if no such interest has been paid, from the first date that the corresponding series of Notes was originally issued under the Base Indenture as supplemented by this First Supplemental Indenture and (ii) the provisions relating to Additional Interest (other than any Additional Interest accrued through the date of issuance of such Exchange Notes) shall be eliminated.

“ **Exchange Offer** ” means the exchange offer by the Company of Exchange Notes for Initial Notes pursuant to the Registration Rights Agreement.

“ **Exchange Offer Registration Statement** ” means a registration statement relating to an Exchange Offer on an appropriate form and all amendments and supplements to such registration statement, in each case including the prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

“ **Global Note** ” has the meaning set forth in Section 2.03(b).

“ **Indenture** ” means the Base Indenture as supplemented by this First Supplemental Indenture.

“ **Independent Investment Banker** ” means one of the Reference Treasury Dealers appointed by the Company after consultation with the Trustee; *provided, however*, that if such Reference Treasury Dealer ceases to be a Primary Treasury Dealer, the Company shall substitute another Primary Treasury Dealer.

“ **Initial Notes** ” means (i) all Notes issued on the Issue Date, (ii) any additional Notes of this series issued under Section 2.02 in an offering not registered under the Securities Act and (iii) any Notes issued in replacement therefor, but not including any Exchange Notes issued in exchange therefor.

“ **Initial Purchasers** ” means J.P. Morgan Securities Inc., Goldman, Sachs & Co., and the other initial purchasers named in the Purchase Agreement, dated June 19, 2008, between the Company and J.P. Morgan Securities Inc. and Goldman, Sachs & Co., as representatives of the initial purchasers.

“ **Interest** ” means, with respect to the Notes, any interest payable on the Notes, including Additional Interest, if any.

“ **Interest Payment Date** ” means each January 15 and July 15, commencing on January 15, 2009.

“ **Investment Grade Rating** ” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P, and the

equivalent investment grade credit rating from any additional Rating Agency or Rating Agencies selected by the Company.

“ **Issue Date** ” means the first date that Notes were originally issued under this First Supplemental Indenture.

“ **Non-U.S. Person** ” means a Person that is not a U.S. person, as defined in Regulation S.

“ **Notes** ” has the meaning set forth in the recitals above.

“ **Rating Agencies** ” means each of Moody’s and S&P and, if any of Moody’s and S&P ceases to rate the Notes or fails to make a rating of the Notes publicly available for reasons outside of the control of the Company, a “nationally recognized statistical rating organization” within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act selected by the Company (as certified by a Board Resolution) and which is reasonably acceptable to the Trustee as a replacement agency for Moody’s or S&P or both of them, as the case may be.

“ **Rating Event** ” means the rating on the Notes is lowered independently by each of the Rating Agencies and the Notes are rated below an Investment Grade Rating by each of the Rating Agencies on any day during the period commencing on the earlier of the date of the first public notice of the occurrence of a Change of Control or the Company’s intention to effect a Change of Control and ending 60 days following consummation of such Change of Control (which period shall be extended so long as the rating of the Notes is under publicly announced consideration for a possible downgrade by any of the Rating Agencies).

“ **Redemption Date** ” has the meaning assigned in Section 4.01.

“ **Redemption Notice** ” has the meaning set forth in Section 4.03.

“ **Redemption Price** ” has the meaning set forth in Section 4.01.

“ **Reference Treasury Dealer** ” means either of J.P. Morgan Securities Inc. and Goldman, Sachs & Co. and their affiliates, which are primary U.S. Government securities dealers in New York City, and their respective successors plus two other primary U.S. Government securities dealers in New York City selected by the Company; *provided, however*, that if any of the foregoing or their affiliates shall cease to be a primary U.S. Government securities dealer in New York City (a “ **Primary Treasury Dealer** ”), the Company shall substitute therefor another Primary Treasury Dealer.

“ **Reference Treasury Dealer Quotations** ” means, with respect to each Reference Treasury Dealer and any Redemption Date, the arithmetic average, as determined by the Company, 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 Company by such Reference Treasury Dealer at 3:30 p.m. (New York City time) on the third Business Day preceding such Redemption Date.

“**Registration**” means a registered Exchange Offer for the Notes by the Company or other registration of the Notes under the Securities Act pursuant to and in accordance with the terms of the Registration Rights Agreement.

“**Registration Rights Agreement**” means the Registration Rights Agreement, dated as of June 24, 2008, between the Company and J.P. Morgan Securities Inc. and Goldman, Sachs & Co., as Representatives of the several Initial Purchasers.

“**Registration Statement**” means the Registration Statement to be filed pursuant to and as defined in the Registration Rights Agreement.

“**Regular Record Date**” means, for the interest payable on any Interest Payment Date, the close of business on January 1 or July 1 (whether or not a Business Day) immediately preceding such Interest Payment Date.

“**Regulation S**” means Regulation S under the Securities Act.

“**Regulation S Certificate**” means a certificate substantially in the form of Exhibit D hereto.

“**Regulation S Global Note**” means a Global Note representing Notes issued and sold pursuant to Regulation S.

“**Restricted Legend**” means the legend set forth in Exhibit B.

“**Restricted Period**” means (i) two years in the case of a U.S. Global Note or (ii) the relevant 40-day distribution compliance period as defined in Regulation S in the case of a Regulation S Global Note.

“**Restricted Regulation S Global Note**” means a Regulation S Global Note that bears the Restricted Legend.

“**Rule 144A**” means Rule 144A under the Securities Act.

“**Rule 144A Certificate**” means (i) a certificate substantially in the form of Exhibit E hereto or (ii) a written certification addressed to the Company and the Trustee to the effect that the Person making such certification (x) is acquiring such Note (or beneficial interest) for its own account or one or more accounts with respect to which it exercises sole investment discretion and that it and each such account is a “qualified institutional buyer” within the meaning of Rule 144A, (y) is aware that the transfer to it or exchange, as applicable, is being made in reliance upon the exemption from the provisions of Section 5 of the Securities Act

provided by Rule 144A, and (z) acknowledges that it has received such information regarding the Company as it has requested pursuant to Rule 144A(d) (4) or has determined not to request such information.

“ **Securities Act** ” means the Securities Act of 1933, as amended.

“ **Substitute Rating Agency** ” means a “nationally recognized statistical rating organization” within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act selected by the Company (pursuant to a Board Resolution and reasonably acceptable to the Trustee) as a replacement agency for Moody’s or S&P, or both of them, as the case may be.

“ **Treasury Rate** ” means, with respect to any Redemption Date, the rate per year equal to the semiannual equivalent or interpolated (on a day count basis) yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such Redemption Date.

“ **Unrestricted Regulation S Global Note** ” means a Regulation S Global Note that does not bear the Restricted Legend.

“ **U.S. Global Note** ” means a Global Note that bears the Restricted Legend representing Notes issued and sold pursuant to Rule 144A.

## ARTICLE 2 THE SECURITIES

### Section 2.01. *Designation* .

(a) The Company hereby establishes a series of Securities designated the “6.75% Notes due 2013” for issuance under the Indenture. The Stated Maturity of the Notes shall be July 15, 2013.

### (b) *Interest Rate* .

(i) The rate at which the Notes shall bear interest shall be 6.75% per annum, subject to Section 2.01(b)(ii); the date from which interest shall accrue on the Notes shall be June 24, 2008, or the most recent Interest Payment Date to which interest has been paid or provided for; the Interest Payment Dates for the Notes shall be January 15 and July 15 of each year, beginning on January 15, 2009; the interest so payable, and punctually paid or duly provided for, on any Interest Payment Date, shall be paid, in immediately available funds, to the Persons in whose names the Notes (or one or more predecessor Notes) is registered at the close of business on the Regular Record Date for such interest, which shall be the January 1 or July 1, as the case may be, next preceding such

Interest Payment Date, without regard to any transfer or exchange of such Notes subsequent to the Regular Record Date and prior to such Interest Payment Date. Any such interest not punctually paid or duly provided for shall, at the Company’s option, cease to be payable to the respective Holders on such Regular Record Date, and such defaulted interest may be paid to the Persons in whose names the Notes (or one or more predecessor Notes) are registered at the close of business on a special record date, which date may not be less than 10 days prior to the date of payment of such defaulted interest, for the payment of such defaulted interest to be fixed by the Trustee, notice whereof shall be given to Holders of Notes not less than 15 days prior to such special record date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Base Indenture. Payment of principal and interest on the Notes shall be made at the Corporate Trust Office of the Trustee or such other office or agency of the Company as may be designated for such purpose, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided, however*, that each installment of interest and principal on the Notes may at the Company’s option with written notice to the Trustee be paid in immediately available funds by transfer to an account maintained by the payee located in the United States, *provided* such payee has given written wire transfer instructions to the Company.

(ii) The interest rate payable on the Notes shall be subject to adjustments from time to time if either Moody’s or S&P, or in either case, a Substitute Rating Agency thereof, downgrades (or subsequently upgrades) the rating assigned to the Notes, in the manner described below.

(A) If the rating of the Notes from Moody’s or any Substitute Rating Agency thereof is decreased to a rating set forth in the immediately following table, the interest rate on the Notes shall increase from the interest rate payable on the Notes on the Issue Date by the percentage points set forth below opposite that rating:

<u>Moody’s Rating*</u>	<u>Percentage Points</u>
Ba1	0.25
Ba2	0.50
Ba3	0.75
B1 or below	1.00

\* Including the equivalent ratings of any Substitute Rating Agency.



(B) If the rating of the Notes from S&P or any Substitute Rating Agency thereof is decreased to a rating set forth in the immediately following table, the interest rate on the Notes shall increase from the interest rate payable on the Notes on the Issue Date by the percentage points set forth below opposite that rating:

<u>S&amp;P Rating*</u>	<u>Percentage Points</u>
BB+	0.25
BB	0.50
BB-	0.75
B+ or below	1.00

\* Including the equivalent ratings of any Substitute Rating Agency.

(C) If at any time the interest rate on the Notes has been adjusted upward and either Moody's or S&P (or, in either case, a Substitute Rating Agency thereof), as the case may be, subsequently increases its rating of the Notes to any of the ratings set forth in the tables above, the interest rate on the Notes shall be decreased such that the interest rate for the Notes equals the interest rate payable on the Notes on the Issue Date plus the applicable percentage points set forth opposite the ratings in the tables above in effect immediately following the increase. If Moody's or any Substitute Rating Agency thereof subsequently increases its rating of the Notes to Baa3 (or its equivalent, in the case of a Substitute Rating Agency) or higher and S&P or any Substitute Rating Agency thereof increases its rating to BBB- (or its equivalent, in the case of a Substitute Rating Agency) or higher, the interest rate on the Notes shall be decreased to the interest rate payable on the Notes on the Issue Date.

(D) Each adjustment required by any decrease or increase in a rating set forth above, whether occasioned by the action of Moody's or S&P (or, in either case, any Substitute Rating Agency thereof), shall be made independent of any and all other adjustments. In no event shall (1) the interest rate on the Notes be reduced to below the interest rate payable on the Notes on the Issue Date or (2) the total increase in the interest rate on the Notes exceed 2.00 percentage points above the interest rate payable on the Notes on the Issue Date.

(E) No adjustments in the interest rate of the Notes shall be made solely as a result of a Rating Agency ceasing to

provide a rating of the Notes. If at any time less than two Rating Agencies provide a rating of the Notes for reason beyond the Company's control, the Company shall use its commercially reasonable efforts to obtain a rating of the Notes from a Substitute Rating Agency, to the extent one exists, and if a Substitute Rating Agency exists, for purposes of determining any increase or decrease in the interest rate on the Notes pursuant to the table above (x) such Substitute Rating Agency shall be substituted for the last Rating Agency to provide a rating of the Notes but which has since ceased to provide such rating, (y) the relative ratings scale used by such Substitute Rating Agency to assign ratings to senior unsecured debt shall be determined in good faith by an independent investment banking institution of national standing appointed by the Company and, for purposes of determining the applicable ratings included in the applicable table in Section 2.01(b)(ii)(A) or 2.01(b)(ii)(B) with respect to such Substitute Rating Agency, such ratings shall be deemed to be the equivalent ratings used by Moody's or S&P, as applicable, in such table and (z) the interest rate on the Notes shall increase or decrease, as the case may be, such that the interest rate equals the interest rate payable on the Notes on the Issue Date plus the appropriate percentage points, if any, set forth opposite the rating from such Substitute Rating Agency in the applicable table in Section 2.01(b)(ii)(A) or 2.01(b)(ii)(B) (taking into account the provisions of clause (y) above) (plus any applicable percentage points resulting from a decreased rating by the other Rating Agency).

(F) For so long as only one Rating Agency provides a rating of the Notes, any subsequent increase or decrease in the interest rate of the Notes necessitated by a reduction or increase in the rating by such Rating Agency shall be twice the percentage points set forth in the applicable table above. For so long as no Rating Agency provides a rating of the Notes, the interest rate on the Notes shall increase to, or remain at, as the case may be, 2.00 percentage points above the interest rate payable on the Notes on the Issue Date.

(G) The interest rate on the Notes shall permanently cease to be subject to any adjustment described in this Section 2.01(b)(ii) (notwithstanding any subsequent decrease in the ratings by either or both Rating Agencies) if the Notes become rated A2 and A (or its equivalent, in the case of a Substitute Rating Agency) or higher by Moody's and S&P, respectively (or, in either case, any Substitute Rating Agency thereof), or one of these ratings if the Notes are only rated by one Rating Agency.

(H) Any interest rate increase or decrease described in this Section 2.01(b)(ii) shall take effect from the first day of the interest period during which a rating change requires an adjustment in the interest rate. If Moody's or S&P or any Substitute Rating Agency thereof changes its rating of the Notes more than once during any particular interest period, the last change by such agency during such period shall control for purposes of any interest rate increase or decrease with respect to the Notes described above relating to such Rating Agency's action.

(I) If the interest rate payable on the Notes is increased as described in this Section 2.01(b)(ii), then the term "interest," as used in this First Supplemental Indenture, the Base Indenture and the Notes, shall be deemed to include any such additional interest unless the context otherwise requires.

(J) The Company shall deliver to the Trustee, and Paying Agent, if the Trustee shall not then be acting as Paying Agent, within five calendar days after either Moody's or S&P or any Substitute Rating Agency thereof downgrades, or subsequently upgrades, the rating assigned to the Notes as described by this Section 2.01(b)(ii), an Officer's Certificate stating (i) that the rating downgrade, or subsequent upgrade, as the case may be, has occurred and (ii) the current rating or ratings upon which the interest rate payable on the Notes shall be based.

(c) The Notes are not subject to any sinking fund.

(d) Interest (including Additional Interest) on the Notes shall be computed on the basis of a 360-day year consisting of twelve 30-day months and, in the case of an incomplete month, the number of days elapsed.

(e) The Notes shall be issuable in registered form, without coupons, in denominations of \$2,000 and any integral multiples of \$1,000 in excess thereof.

(f) The principal of and premium, if any, and interest on the Notes shall be payable at the office or agency of the Company designated for that purpose as the Payment Office, as provided in Section 4.05 of the Base Indenture; *provided, however*, that interest may be payable at the option of the Company by check mailed to the address of the Person entitled thereto as such address shall appear on the Security Register on the record date for such interest payment.

(g) The currency of denomination of the Notes shall be United States Dollars. Payment of principal of and premium, if any, and interest on the Notes shall be made in United States Dollars.

Section 2.02. *Principal Amount; Series Treatment for Additional Securities* .

(a) The Notes shall be initially limited to an aggregate principal amount of \$500,000,000, except for Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Notes pursuant to Sections 3.08, 3.09, 3.11 or 8.02 of the Base Indenture. The Company may, without notice to or the consent of the Holders of the outstanding Notes, issue additional Notes of the same tenor as the Notes by Company Order, so that such additional Notes and the outstanding Notes shall form a single series of Securities under the Base Indenture as supplemented by this First Supplemental Indenture.

(b) Any additional Notes issued under Section 2.02(a) shall have the same form and terms in all respects as the outstanding Notes (other than the date of issuance and except that interest shall accrue on the additional Notes from the most recent date to which interest has been paid on the Notes or, if no interest has been paid on the Notes, from the first date that the Notes were originally issued under this First Supplemental Indenture), including the same right to receive accrued and unpaid interest.

(c) For all purposes of the Indenture, all Notes, whether Initial Notes, Exchange Notes or additional Notes issued under Section 2.02(a) shall constitute one series of Notes and shall vote together as one series of Notes.

Section 2.03. *Form of Securities; Global Form* .

(a) The Notes shall be substantially in the form of Exhibit A hereto. The terms and provisions contained in the form of Notes set forth in Exhibit A shall constitute, and are hereby expressly made, a part of the Base Indenture as supplemented by this First Supplemental Indenture.

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 the Base Indenture, or as may be required by the Depositary or as may be required for the Initial Notes to be tradeable on any market developed for trading of securities pursuant to Rule 144A or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed, or to conform to usage, or to indicate any special limitations or restrictions to which any particular Notes are subject.

(b) So long as any Notes of this series are eligible for book-entry settlement with the Depositary, or unless otherwise required by law, or otherwise contemplated by Section 3.08(b) of the Base Indenture, all of the Notes of this series shall be represented by one or more Notes in global form registered in the

name of the Depositary or the nominee of the Depositary (each and collectively, the “**Global Note**”). The transfer and exchange of beneficial interests in any such Global Note shall be effected through the Depositary in accordance with the Indenture and the applicable procedures of the Depositary. Except as provided in Section 3.08(b) of the Base Indenture, beneficial owners of a Global Note shall not be entitled to have certificates registered in their names, shall not receive or be entitled to receive physical delivery of certificates in definitive form and shall not be considered holders of such Global Note.

Any Global Note shall represent the outstanding Notes and shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee in such manner and upon instructions given by the Holder of such Notes in accordance with the Base Indenture.

Section 2.04. *Restrictive Legends* .

- (a) Except as otherwise provided in Section 2.04(e), each Initial Note or additional Note issued under Section 2.02(a) (other than an Unrestricted Regulation S Note) shall bear the Restricted Legend.
- (b) Each Global Note, whether or not an Initial Note or additional Note issued under Section 2.02(a), shall bear the DTC Legend.
- (c) Each Restricted Regulation S Global Note shall bear the Restricted Legend.
- (d) Initial Notes and additional Notes issued under Section 2.02(a) offered and sold in reliance on Regulation S shall be issued as provided in Section 2.08.
- (e) (i) If the Company determines (upon the advice of counsel and such other certifications and evidence as the Company may reasonably require) that a Note is eligible for resale pursuant to Rule 144 under the Securities Act (or a successor rule) and that the Restricted Legend is no longer necessary or appropriate in order to ensure that subsequent transfers of the Note (or a beneficial interest therein) are effected in compliance with the Securities Act; or (ii) or after an Initial Note is (x) subject to an effective registration statement under the Securities Act, pursuant to the Registration Rights Agreement or otherwise, or (y) exchanged for an Exchange Note, the Company may, subject to the provision of an Officer’s Certificate and an Opinion of Counsel in accordance with Section 14.05 of the Base Indenture, instruct the Trustee to cancel such Note and issue to the Holder thereof (or to its transferee) a new Note of like tenor and

amount, registered in the name of the Holder thereof (or its transferee), that does not bear the Restricted Legend, and the Trustee shall comply with such instruction.

Section 2.05. *Transfer Restrictions* .

(a) By its acceptance of any Note bearing the Restricted Legend, each Holder of such a Note acknowledges the restrictions on transfer of such Note set forth in this First Supplemental Indenture and in the Restricted Legend and agrees that it shall transfer such Note only as provided in this First Supplemental Indenture and the Restricted Legend. The Company and the Trustee as Registrar shall not register a transfer of any Note unless such transfer complies with the restrictions on transfer of such Note set forth in this First Supplemental Indenture and the Restricted Legend. In connection with any transfer of Notes, each Holder agrees by its acceptance of the Notes to furnish the Trustee as Registrar or the Company such certifications, legal opinions or other information as either of them may reasonably require to confirm that such transfer is being made pursuant to an exemption from, or a transaction not subject to, the registration requirements of the Securities Act; *provided* that the Trustee shall not be required to determine (but may rely on a determination made by the Company with respect to) the sufficiency of any such certifications, legal opinions or other information.

The Trustee shall retain copies of all letters, notices and other written communications received pursuant to the Base Indenture or this Section 2.05 (a). The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Trustee.

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

Section 2.06 . *Registration, Transfer and Exchange*.

(a) The Notes shall be issued in registered form only, without coupons, and except under the circumstances described in Section 2.06(b)(iv), the Notes shall be issued in global form only. The Company shall cause the Trustee to maintain the Security Register of the Notes, for registering the record ownership of Notes by the Holders thereof and transfers and exchanges of the Notes.

(b) (i) Each Global Note shall be registered in the name of the Depository or its nominee and, so long as DTC is serving as the Depository thereof, shall bear the DTC Legend.

(ii) Each Global Note shall be delivered to the Trustee as custodian for the Depository. Transfers of a Global Note (but not a beneficial interest therein) shall be limited to transfers thereof in whole, but not in part, to the Depository, its successors or their respective nominees, except as set forth in Section 2.06(b)(iv).

(iii) Agent Members shall have no rights under the Indenture with respect to any Global Note held on their behalf by the Depository, and the Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and Holder of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, the Depository or its nominee may grant proxies and otherwise authorize any Person (including any Agent Member and any Person that holds a beneficial interest in a Global Note through an Agent Member) to take any action which a Holder is entitled to take under the Indenture or the Notes, and nothing herein shall impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any security.

(iv) If (x) the Depository notifies the Company that it is unwilling or unable to continue as Depository for a Global Note and a successor depository is not appointed by the Company within 90 days of the notice or (y) an Event of Default has occurred and is continuing and the Trustee has received a request from the Depository, the Trustee shall promptly exchange each beneficial interest in each Global Note for one or more Certificated Notes in authorized denominations having an equal aggregate principal amount registered in the name of the owner of such beneficial interest, as identified to the Trustee by the Depository, and thereupon each Global Note shall be deemed canceled. If a Global Note does not bear the Restricted Legend, then the Certificated Notes issued in exchange therefor shall not bear the Restricted Legend. If a Global Note bears the Restricted Legend, then the Certificated Notes issued in exchange therefor shall bear the Restricted Legend; *provided* that any Holder of any such Certificated Note issued in exchange for a beneficial interest in a Restricted Regulation S Global Note shall have the right upon presentation to the Trustee of a duly completed Certificate of Beneficial Ownership after the Restricted Period to exchange such Certificated Note for a Certificated Note of like tenor and amount that does not bear the Restricted Legend, registered in the name of such Holder.

(c) Each Certificated Note issued pursuant to Section 2.06(b)(iv) shall be registered in the name of the Holder thereof or its nominee.

(d) A Holder may transfer a Note (or a beneficial interest therein) to another Person or exchange a Note (or a beneficial interest therein) for another Note or Notes of any authorized denomination by presenting to the Trustee a written request therefor stating the name of the proposed transferee or requesting such an exchange, accompanied by any certification, opinion or other document required by Section 2.07. The Trustee shall promptly register any transfer or exchange that meets the requirements of this Article 2 by noting the same in the register maintained by the Trustee for the purpose; *provided* that:

(i) no transfer or exchange shall be effective until it is registered in such register, and

(ii) the Trustee shall not be required (x) to issue, register the transfer of or exchange any Note for a period of 15 days before a selection of Notes to be redeemed or purchased pursuant to a Change of Control Offer, (y) to register the transfer of or exchange any Note so selected for redemption or purchase in whole or in part, except, in the case of a partial redemption or purchase, that portion of any Note not being redeemed or purchased, or (z) if a redemption or a purchase pursuant to a Change of Control Offer is to occur after a Regular Record Date but on or before the corresponding Interest Payment Date, to register the transfer of or exchange any Note on or after the Regular Record Date and before the date of redemption or purchase. Prior to the registration of any transfer, the Company, the Trustee and their agents shall treat the Person in whose name any Note is registered as the owner and Holder thereof for all purposes (whether or not the Note is overdue), and shall not be affected by notice to the contrary.

From time to time the Company shall execute and the Trustee shall authenticate additional Notes as necessary in order to permit the registration of a transfer or exchange in accordance with this Section 2.06.

No service charge shall be imposed in connection with any transfer or exchange of any Note, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than a transfer tax or other similar governmental charge payable upon exchange pursuant to Section 2.06(b)(iv)).

(e) (i) *Global Note to Global Note*. If a beneficial interest in a Global Note is transferred or exchanged for a beneficial interest in another Global Note, the Trustee shall (x) record a decrease in the principal amount of the Global Note being transferred or exchanged equal to the principal amount of such transfer or exchange and (y) record a like increase in the principal amount of the other Global Note. Any beneficial interest in one Global Note that is transferred to a Person who takes delivery in the form of an interest in another Global Note, or exchanged for an interest in another Global Note, shall, upon transfer or exchange, cease to be an interest in such Global Note and become an interest in



the other Global Note and, accordingly, shall thereafter be subject to all transfer and exchange restrictions, if any, and other procedures applicable to beneficial interests in such other Global Note for as long as it remains such an interest.

(ii) *Certificated Note to Certificated Note* . If a Certificated Note is transferred or exchanged for another Certificated Note, the Trustee shall (x) cancel the Certificated Note being transferred or exchanged, (y) deliver one or more new Certificated Notes in authorized denominations having an aggregate principal amount equal to the principal amount of such transfer or exchange to the transferee (in the case of a transfer) or the Holder of the canceled Certificated Note (in the case of an exchange), registered in the name of such transferee or Holder, as applicable, and (z) if such transfer or exchange involves less than the entire principal amount of the canceled Certificated Note, deliver to the Holder thereof one or more Certificated Notes in authorized denominations having an aggregate principal amount equal to the untransferred or unexchanged portion of the canceled Certificated Note, registered in the name of the Holder thereof.

Section 2.07 . *Restrictions on Transfer and Exchange.*

(a) The transfer or exchange of any Note (or a beneficial interest therein) may only be made in accordance with this Section 2.07 and Section 2.06 and, in the case of a Global Note (or a beneficial interest therein), the applicable rules and procedures of the Depository. The Trustee shall refuse to register any requested transfer or exchange that does not comply with the preceding sentence.

(b) Subject to Section 2.07(c), the transfer or exchange of any Note (or a beneficial interest therein) of the type set forth in column A below for a Note (or a beneficial interest therein) of the type set forth opposite in column B below may only be made in compliance with the certification requirements, if any, described in the clause of this paragraph set forth opposite in column C below.

A	B	C
U.S. Global Note	U.S. Global Note	(i)
U.S. Global Note	Regulation S Global Note	(ii)
Certificated Note	Certificated Note	(iii)
Regulation S Global Note	U.S. Global Note	(iv)
Regulation S Global Note	Regulation S Global Note	(i)

(i) No certification is required.

(ii) The Person requesting the transfer or exchange must deliver or cause to be delivered to the Trustee a duly completed Regulation S Certificate.

(iii) The Person requesting the transfer or exchange must deliver or cause to be delivered to the Trustee (x) a duly completed Rule 144A Certificate or (y) a duly completed Regulation S Certificate, and/or an Opinion of Counsel and such other certifications and evidence as the Company may reasonably require in order to determine that the proposed transfer or exchange is being made in compliance with the Securities Act and any applicable securities laws of any state of the United States; *provided* that if the requested transfer or exchange is made by the Holder of a Certificated Note that does not bear the Restricted Legend, then no certification is required. In the event that (1) the requested transfer or exchange takes place after the Restricted Period and a duly completed Regulation S Certificate is delivered to the Trustee or (2) a Certificated Note that does not bear the Restricted Legend is surrendered for transfer or exchange, upon transfer or exchange the Trustee shall deliver a Certificated Note that does not bear the Restricted Legend.

(iv) The Person requesting the transfer or exchange must deliver or cause to be delivered to the Trustee a duly completed Rule 144A Certificate.

(c) No certification is required in connection with any transfer or exchange of any Note (or a beneficial interest therein) after such Note (i) is eligible for resale pursuant to Rule 144 under the Securities Act (or a successor provision); *provided* that the Company has provided the Trustee with an Officer's Certificate to that effect, and the Company may require from any Person requesting a transfer or exchange in reliance upon this clause an opinion of counsel and any other reasonable certifications and evidence in order to support such certificate; or (ii) (x) subject to an effective registration statement under the Securities Act, pursuant to the Registration Rights Agreement or otherwise, or (y) exchanged for an Exchange Note.

Any Certificated Note delivered in reliance upon this Section 2.07(c) shall not bear the Restricted Legend.

(d) The Trustee shall retain copies of all certificates, opinions and other documents received in connection with the transfer or exchange of a Note (or a beneficial interest therein), and the Company shall have the right to inspect and make copies thereof at any reasonable time upon reasonable prior written notice to the Trustee.

Section 2.08 . *Restricted Regulation S Global Notes.*

(a) Each Note originally sold by the Initial Purchasers in reliance upon Regulation S shall be evidenced by one or more Regulation S Global Notes that bear the Restricted Legend.

(b) An owner of a beneficial interest in a Restricted Regulation S Global Note (or a Person acting on behalf of such an owner) may provide to the Trustee (and the Trustee shall accept) a duly completed Certificate of Beneficial Ownership at any time after the Restricted Period (it being understood that the Trustee shall not accept any such certificate during the Restricted Period). Promptly after acceptance of a Certificate of Beneficial Ownership with respect to such beneficial interest, the Trustee shall cause such beneficial interest to be exchanged for an equivalent beneficial interest in an Unrestricted Regulation S Global Note, and shall (x) permanently reduce the principal amount of such Restricted Regulation S Global Note by the amount of such beneficial interest and (y) increase the principal amount of such Unrestricted Regulation S Global Note by the amount of such beneficial interest.

(c) Notwithstanding anything to the contrary contained herein, beneficial interests in a Restricted Regulation S Global Note may be held through the Depository only through Euroclear and Clearstream and their respective direct and indirect participants.

If after the Restricted Period any Initial Purchaser owns a beneficial interest in a Restricted Regulation S Global Note, such Initial Purchaser may, upon written request to the Trustee accompanied by a certification as to its status as an Initial Purchaser, exchange such beneficial interest for an equivalent beneficial interest in an Unrestricted Regulation S Global Note, and the Trustee shall comply with such request and shall (x) permanently reduce the principal amount of such Restricted Regulation S Global Note by the amount of such beneficial interest and (y) increase the principal amount of such Unrestricted Regulation S Global Note by the amount of such beneficial interest.

Section 2.09. *Additional Interest* .

If Additional Interest is required to be paid with respect to any Notes, the interest rate borne by such Notes shall be increased as provided in the Registration Rights Agreement.

The Company shall deliver to the Trustee, and Paying Agent, if the Trustee shall not then be acting as Paying Agent, within five calendar days of the date on which Additional Interest is required to be paid with respect to any Notes, an Officer's Certificate stating that such Additional Interest has become payable with respect to the Notes.

Additional Interest shall, for the purposes of the Notes, constitute “**interest**” used in Article 4 of the Base Indenture and interest for purposes of this First Supplemental Indenture and Global Note.

ARTICLE 3  
COVENANTS

*Section 3.01. Covenants.*

The Notes shall be subject to the covenants set forth in Article 4 of the Base Indenture.

*Section 3.02. Offer To Repurchase Upon Change Of Control Triggering Event.*

(a) If a Change of Control Triggering Event occurs with respect to the Notes, unless the Company has exercised its option to redeem the Notes under Article 4 hereof or the Notes, the Company shall make an offer (the “**Change of Control Offer**”) to each Holder of Notes to repurchase all or any part (equal to \$2,000 or any integral multiple of \$1,000 in excess thereof) of such Holder’s Notes on the terms set forth herein and in the Notes.

(b) In such Change of Control Offer, the Company shall offer payment in cash (the “**Change of Control Payment**”) equal to 101% of the aggregate Principal Amount of the Notes to be repurchased, plus accrued and unpaid interest, if any, on the Notes up to, but not including, the date of repurchase.

(c) Within 30 days following any Change of Control Triggering Event or, at the Company’s option, prior to any Change of Control, but after public announcement of the transaction that constitutes or may constitute the Change of Control, the Company shall send notice of such Change of Control Offer by first-class mail, with a copy to the Trustee, to each Holder of Notes describing the transaction that constitutes or may constitute the Change of Control Triggering Event with respect to the Notes and offering to repurchase the Notes on the date specified in the notice, which date shall be no earlier than 30 days and no later than 60 days from the date such notice is mailed, or, if the notice is mailed prior to the Change of Control, no earlier than 30 days and no later than 60 days from the date on which the Change of Control Triggering Event with respect to the Notes occurs (the “**Change of Control Payment Date**”). The notice shall, if mailed prior to the date of consummation of the Change of Control, state that the offer to repurchase is conditioned on the Change of Control Triggering Event occurring on or prior to the Change of Control Payment Date.

(d) On the Change of Control Payment Date, the Company shall, to the extent lawful:

(i) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;

(ii) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of Notes or portions of Notes properly tendered; and

(iii) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating the aggregate Principal Amount of Notes or portions of Notes being repurchased.

The Company shall publicly announce the results of the Change of Control Offer on, or as soon as possible after, the date of purchase.

(e) The Company shall 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 such an offer in the manner, at the time and otherwise in compliance with the requirements for an offer made by the Company and the third party purchases all Notes properly tendered and not withdrawn under its offer. In addition, the Company shall not repurchase any Notes if there has occurred and is continuing on the Change of Control Payment Date an Event of Default under the Indenture, other than a default in the payment of the Change of Control Payment upon a Change of Control Triggering Event.

(f) The Company shall comply in all material respects with the requirements of Rule 14e-1 under the Exchange Act, and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control Triggering Event. To the extent that the provisions of any such securities laws or regulations conflict with the Change of Control Offer provisions of this First Supplemental Indenture or the Notes, the Company shall comply with those securities laws and regulations and shall not be deemed to have breached its obligations under the Change of Control Offer provisions by virtue of any such conflict.

#### ARTICLE 4 REDEMPTION OF THE NOTES

##### Section 4.01 . *Optional Redemption by Company.*

(a) The provisions of Article 10 of the Base Indenture shall apply to the Notes.

(b) At any time and from time to time, the Notes shall be redeemable, as a whole or in part, at the Company's option, on at least 30 days, but not more than 60 days, prior notice mailed to the registered address of each Holder of the Notes (the "**Redemption Date**"), at a redemption price (the "**Redemption Price**") equal to the greater of: (i) 100% of the Principal Amount of the Notes to be redeemed

and (ii) the sum of the present values of the remaining scheduled payments of interest and principal on the Notes (exclusive of interest accrued and unpaid to, but not including, the Redemption Date) discounted to the Redemption Date on a semiannual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate plus 50 basis points, plus, in either case, accrued and unpaid interest to, but not including, the Redemption Date.

Section 4.02. *Selection of Notes to Be Redeemed.*

(a) If less than all of the Notes are to be redeemed, unless the procedures of the Depositary provide otherwise, the Trustee shall select the Notes to be redeemed by lot, on a pro rata basis or by another method the Trustee considers fair and appropriate (so long as such method is not prohibited by the rules of any stock exchange or quotation association on which the Notes are then traded or quoted, if any). Subject to the previous sentence, the Trustee shall make the selection within five Business Days after it receives the notice provided for in Section 4.01 from outstanding Notes not previously called for redemption.

Notes and portions of Notes that the Trustee selects shall be in principal amounts of \$2,000 or an integral multiple of \$1,000. Provisions of this First Supplemental Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption. The Trustee shall notify the Company promptly of the Notes or portions of the Notes to be redeemed.

Section 4.03. *Redemption Notice.*

(a) At least 30 days but not more than 60 days before a Redemption Date, the Company shall mail a notice of redemption (a “**Redemption Notice**”) by first-class mail, postage prepaid, to each Holder of Notes to be redeemed.

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

- (1) the Redemption Date;
- (2) the Redemption Price;
- (3) the name and address of the Paying Agent;
- (4) that Notes called for redemption shall be redeemed on the Redemption Date;
- (5) that Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price;
- (6) if fewer than all of the outstanding Notes are to be redeemed, the certificate numbers, if any, and principal amounts of the particular Notes to be redeemed;

(7) that, unless the Company defaults in making payment of such Redemption Price, interest and Additional Interest, if any, on Notes called for redemption shall cease to accrue on and after the Redemption Date; and

(8) the CUSIP number(s) of the Notes.

At the Company's request, the Trustee shall give the Redemption Notice in the Company's name and at the Company's expense; *provided* that the Company makes such request at least 15 calendar days prior to the date by which such Redemption Notice must be given to Holders in accordance with this Section 4.03 and the text of such notice is provided by the Company.

Section 4.04. *Effect of Redemption Notice.*

Once the Redemption Notice is mailed, the Notes called for redemption shall become due and payable on the Redemption Date and at the Redemption Price stated in the notice. Upon surrender to the Paying Agent, such Notes shall be paid at the Redemption Price stated in the notice.

Section 4.05. *Deposit of Redemption Price.*

Prior to 11:00 a.m., New York City time, on the Redemption Date, the Company shall deposit with a Paying Agent or the Trustee money sufficient to pay the Redemption Price of all Notes to be redeemed on that date other than Notes or portions of Notes called for redemption which on or prior thereto have been delivered by the Company to the Trustee for cancellation. If such money is then held by the Company in trust and is not required for such purpose it shall be discharged from such trust.

Section 4.06. *Securities Redeemed in Part.*

Upon surrender of a Note that is redeemed in part, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unredeemed portion of the Note surrendered.

ARTICLE 5  
DEFEASANCE

Section 5.01 . *Defeasance By The Company.*

The Notes shall be subject to defeasance at the option of the Company in accordance with the terms and conditions set forth in Article 11 of the Base Indenture.

ARTICLE 6  
MISCELLANEOUS

Section 6.01 . *Rule 144A Information; No Resales By Affiliates.*

(a) Within the period prior to the expiration of the holding period applicable to sales thereof under Rule 144 under the Securities Act (or any successor provision), the Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the Exchange Act, make available to any Holder or beneficial Holder of Initial Notes in connection with any sale thereof and any prospective purchaser of Initial Notes designated by such Holder or beneficial Holder, the information required pursuant to Rule 144A(d)(4) under the Securities Act upon the request of any Holder or beneficial Holder of the Initial Notes and it shall take such further action as any Holder or beneficial Holder of such Initial Notes may reasonably request, all to the extent required from time to time to enable such Holder or beneficial Holder to sell its Initial Notes without registration under the Securities Act within the limitation of the exemption provided by Rule 144A, as such Rule may be amended from time to time. Upon the request of any Holder or any beneficial Holder of the Initial Notes, the Company shall deliver to such Holder a written statement as to whether it has complied with such requirements.

(b) Any Initial Notes that, prior to the expiration of the holding period applicable to sales thereof under Rule 144 under the Securities Act (or any successor provision), are purchased or owned by the Company or any affiliate thereof (within the meaning of Rule 144) that is controlled by the Company may not be resold by the Company or such affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction which results in such Initial Notes no longer being "restricted securities" (as defined under Rule 144).

Section 6.02 . *Ratification Of Indenture.*

The Base Indenture, as supplemented by this First Supplemental Indenture, is in all respects ratified and confirmed, and this First Supplemental Indenture shall be deemed part of the Base Indenture in the manner and to the extent herein and therein provided.

Section 6.03 . *Trustee Not Responsible For Recitals.*

The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this First Supplemental Indenture.



Section 6.04 . *Governing Law.*

This First Supplemental Indenture and each Note shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 6.05 . *Separability.*

In case any one or more of the provisions contained in this First Supplemental Indenture or in the Notes shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this First Supplemental Indenture or of the Notes, but this First Supplemental Indenture and the Notes shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 6.06 . *Counterparts.*

This First Supplemental Indenture may be executed in any number of counterparts each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed as of the date first above written.

BEST BUY CO., INC.

By: /s/ Ryan D. Robinson  
Name: Ryan D. Robinson  
Title: Senior Vice president, U.S. SBU CFO and Treasurer

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WELLS FARGO BANK, N.A., as Trustee

By: /s/ Jane Y. Schweiger  
Name: Jane Y. Schweiger  
Title: Vice President

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## Best Buy Co., Inc.

## 6.75% Notes due 2013

[CUSIP] [144A]: [086516AG6]  
 [ISIN] [144A]: [US086516AG65]

[CUSIP] [Reg S]: [U3091KAA4]  
 [ISIN] [Reg S]: [USU3091KAA44]

[CUSIP] [Registered]: [086516AJ0]  
 [ISIN] [Registered]: [US086516AJ05]

No. [R-1][S-1]

\$

Best Buy Co., Inc., a Minnesota corporation (herein called the “**Company**”, which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of \$ \_\_\_\_\_, or such other Principal Amount as may be set forth in the records of the Trustee (hereinafter referred to) in accordance with the terms of the Indenture, on July 15, 2013 (the “**Maturity Date**”) (except to the extent redeemed or repaid prior to the Maturity Date) and to pay interest thereon from June 24, 2008 (the “**Original Issue Date**”) or from the most recent Interest Payment Date to which interest has been paid or duly provided for semi-annually at the rate of 6.75% per annum, on January 15 and July 15 (each such date, an “**Interest Payment Date**”), commencing on January 15, 2009, until the principal hereof is paid or made available for payment.

Subject to the limitations set forth in Section 2.01(b) of the First Supplemental Indenture (as defined herein), the interest rate payable on the Notes (as defined herein) will be subject to adjustment from time to time, on the terms set forth in the Indenture, if either Moody’s or S&P downgrades (or subsequently upgrades) the debt rating assigned to the Notes. If the interest rate payable on this Note is increased in accordance with the terms hereof and of the Indenture, then the term “interest,” as used in this Note and the Indenture, will be deemed to include any such additional interest unless the context otherwise requires.

*1. Payment of Interest*. The interest so payable, and punctually paid or made available for payment, on any Interest Payment Date, will, as provided in the Indenture, be paid, in immediately available funds, to the Person in whose name this Note (or one or more predecessor Notes) is registered at the close of business on January 1 or July 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date (the “**Regular Record Date**”),

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without regard to any transfer or exchange of such Notes subsequent to the Regular Record Date and prior to such Interest Payment Date. Any such interest not punctually paid or duly provided for (“**Defaulted Interest**”) shall, at the Company’s option, cease to be payable to the Holder on such Regular Record Date, and such Defaulted Interest may be paid to the Person in whose name this Note (or one or more predecessor Notes) is registered at the close of business on a special record date (the “**Special Record Date**”), which date may not be less than 10 days prior to the date of payment of such Defaulted Interest, for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Notes not less than 15 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

2. *Place of Payment* . Payment of principal of and premium, if any, and interest on this Note will be made at the Corporate Trust Office of the Trustee or such other office or agency of the Company as may be designated for such purpose, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided, however* , that each installment of principal of and premium, if any, and interest on this Note may at the Company’s option with written notice to the Trustee be paid in immediately available funds by transfer to an account maintained by the payee located in the United States, *provided* such payee has given written wire transfer instructions to the Company.

3. *Time of Payment* . In any case where any Interest Payment Date, the Maturity Date or any date fixed for redemption or repayment of the Notes shall not be a Business Day, then (notwithstanding any other provision of the Indenture or this Note), payment of principal, premium, if any, or interest need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on such Interest Payment Date, the Maturity Date or the date so fixed for redemption or repayment, and no interest shall accrue in respect of the delay.

4. *General* . This Note is one of a duly authorized issue of Securities of the Company, issued and to be issued in one or more series under an indenture (the “**Base Indenture**”), dated as of June 24, 2008, as supplemented by a First Supplemental Indenture thereto, dated as of June 24, 2008 (the “**First Supplemental Indenture**” and, together with the Base Indenture, the “**Indenture**”), between the Company and Wells Fargo Bank, N.A., as Trustee (herein called the “**Trustee**”, which term includes any successor Trustee under the Indenture with respect to the series of Securities of which this Note is a part). Reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of this Note and of the terms upon which this Note is, and will be, authenticated and delivered. This Note is one of a duly authorized series

of Securities designated as 6.75% Notes due 2013 (collectively, the “**Notes**”), initially limited in aggregate Principal Amount to \$500,000,000.

5. *Further Issuance* . The Company may from time to time, without the consent of the Holders of the Notes, issue additional Securities (the “**Additional Securities**”) of this series having the same ranking and the same interest rate, Maturity and other terms as the Notes. Any Additional Securities of this series and the Notes will constitute a single series under the Indenture and all references to the Notes shall include the Additional Securities unless the context otherwise requires.

6. *Events of Default* . If an Event of Default with respect to the Notes shall have occurred and be continuing, the principal of the Notes may be declared or become due and payable in the manner and with the effect provided in the Indenture.

7. *Sinking Fund* . The Notes shall not be subject to any sinking fund.

8. *Optional Redemption* . The Notes will be redeemable at any time, at the option of the Company, in whole or from time to time in part, upon not less than 30 days nor more than 60 days prior notice, on any date prior to their Maturity at a redemption price, calculated pursuant to the First Supplemental Indenture, which includes any accrued interest thereon to, but not including, the Redemption Date. In the case of any partial redemption, selection of the Notes for redemption will be made by the Trustee by such methods as the Trustee in its sole discretion shall deem fair and appropriate. If any Note is to be redeemed in part only, the notice of redemption relating to such Note shall state the portion of the Principal Amount thereof to be redeemed. A new Note in Principal Amount equal to the unredeemed portion thereof will be issued in the name of the Holder thereof upon cancellation of this Note.

9. *Offer to Repurchase upon a Change of Control Triggering Event* . Upon the occurrence of a Change of Control Triggering Event with respect to the Notes, the Company shall be required to make an offer to repurchase the Notes on the terms set forth in the First Supplemental Indenture.

10. *Full Defeasance and Covenant Defeasance* . The Indenture contains provisions for defeasance at any time of (a) the entire Indebtedness of the Company represented by this Note and (b) certain restrictive covenants and the related Defaults and Events of Default, upon compliance by the Company with certain conditions set forth therein, which provisions apply to this Note.

11. *Modification and Waivers; Obligations of the Company Absolute* . The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes. Such amendment may be effected under the Indenture at any time by the Company and the Trustee with the consent of the

Holders of not less than a majority in aggregate Principal Amount of the outstanding Notes of each series affected thereby. The Indenture also contains provisions permitting the Holders of not less than a majority in aggregate Principal Amount of the Notes at the time outstanding, on behalf of the Holders of all outstanding Notes, to waive compliance by the Company with certain provisions of the Indenture. Furthermore, provisions in the Indenture permit the Holders of not less than a majority in aggregate Principal Amount of the outstanding Notes of a series to waive on behalf of all of the Holders of Notes of such series certain past defaults under the Indenture and their consequences. Any such consent or waiver shall be conclusive and binding upon the Holder of this Note and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and premium, if any, and interest on this Note at the time, place, and rate, and in the coin or currency, herein prescribed.

*12. Limitation on Suits* . As set forth in, and subject to, the provisions of the Indenture, no Holder of any Note will have any right to institute any proceeding with respect to the Indenture or for any remedy thereunder, unless such Holder shall have previously given to the Trustee written notice of a continuing Event of Default with respect to this series, the Holders of not less than 25% in Principal Amount of the outstanding Notes shall have made written request, and offered reasonable indemnity, to the Trustee to institute such proceedings as trustee, and the Trustee shall not have received from the Holders of a majority in Principal Amount of the outstanding Notes a direction inconsistent with such request and shall have failed to institute such proceeding within 60 days; *provided, however* , that such limitations do not apply to a suit instituted by the Holder hereof for the enforcement of payment of the principal of or interest on this Note on or after the respective due dates expressed herein.

*13. Authorized Denominations* . The Notes are issuable only in registered form without coupons in denominations of \$2,000 or any integral multiple of \$1,000 in excess thereof.

*14. Registration of Transfer or Exchange* . As provided in the Indenture and subject to certain limitations herein and therein set forth, the transfer of this Note is registrable in the register of the Notes maintained by the Registrar upon surrender of this Note for registration of transfer, at the office or agency of the Company in any place where the principal of and premium, if any, and interest on this Note are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar, duly executed by the Holder hereof or its attorney duly authorized in writing, and thereupon one

or more new Notes, of authorized denominations and for the same aggregate Principal Amount, will be issued to the designated transferee or transferees.

As provided in the Indenture and subject to certain limitations herein and therein set forth, the Notes are exchangeable for a like aggregate Principal Amount of Notes of different authorized denominations, as requested by the Holders surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Holder as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

*15. Defined Terms* . All terms used in this Note, which are defined in the Indenture and are not otherwise defined herein, shall have the meanings assigned to them in the Indenture.

**16. Governing Law** . **This Note shall be governed by, and construed in accordance with, the laws of the State of New York.**

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.



IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed and its seal to be hereunto affixed and attested.

Dated:     , 2008

BEST BUY CO., INC.

By: \_\_\_\_\_  
Name:  
Title:

A-6

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**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Securities of the series designated therein referred to in the within-mentioned Base Indenture, as supplemented by the within-mentioned First Supplemental Indenture.

Dated:     , 2008

WELLS FARGO BANK, N.A., as Trustee

By: \_\_\_\_\_  
Name:  
Title:

A-7

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[FORM OF TRANSFER NOTICE]

FOR VALUE RECEIVED the undersigned registered holder hereby sell(s), assign(s) and transfer(s) unto

Insert Taxpayer Identification No.

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Please print or typewrite name and address including zip code of assignee

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the within Note and all rights thereunder, hereby irrevocably constituting and appointing attorney to transfer such Note on the books of the Company with full power of substitution in the premises.

[THE FOLLOWING PROVISION TO BE INCLUDED ON ALL  
CERTIFICATES BEARING A RESTRICTED LEGEND]

In connection with any transfer of this Note occurring prior to the Resale Restriction Termination Date, the undersigned confirms that such transfer is made without utilizing any general solicitation or general advertising and further as follows:

*Check One*

- (1) This Note is being transferred to a “qualified institutional buyer” in compliance with Rule 144A under the Securities Act of 1933, as amended, and certification in the form of Exhibit E to the Indenture is being furnished herewith.
- (2) This Note is being transferred to a Non-U.S. Person in compliance with the exemption from registration under the Securities Act of 1933, as amended, provided by Regulation S thereunder, and certification in the form of Exhibit D to the Indenture is being furnished herewith.

*or*

- (3) This Note is being transferred other than in accordance with (1) or (2) above and documents are being furnished which comply with the conditions of transfer set forth in this Note and the Indenture.

If none of the foregoing boxes is checked, the Trustee is not obligated to register this Note in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in the Indenture have been satisfied.

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

\_\_\_\_\_  
Seller

By \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or any change whatsoever.

Signature Guarantee: <sup>1</sup>

\_\_\_\_\_

By

\_\_\_\_\_

To be executed by an executive officer

<sup>1</sup> Signatures must be guaranteed by an “**e ligible guarantor institution**” meeting the requirements of the Registrar, which requirements include membership or participation in the Note Transfer Agent Medallion Program (“**STAMP**”) or such other “**s ignature guarantee program**” as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

OPTION OF HOLDER TO ELECT PURCHASE

If you wish to have this Note purchased by the Company pursuant to a Change of Control Offer pursuant to Section 3.01 of the First Supplemental Indenture, check the box:

If you wish to have a portion of this Note purchased by the Company pursuant to a Change of Control Offer pursuant to Section 3.01 of the First Supplemental Indenture, state the amount (in principal amount): \$ \_\_\_\_\_.

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

Your Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this Note)

Signature Guarantee:<sup>2</sup> \_\_\_\_\_

<sup>2</sup> Signatures must be guaranteed by an “**eligible guarantor institution**” meeting the requirements of the Registrar, which requirements include membership or participation in the Note Transfer agent Medallion Program (“**STAMP**”) or such other “**signature guarantee program**” as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.



## RESTRICTED LEGEND

THIS NOTE 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 NOTE 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 NOTE, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED NOTES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH NOTE, PRIOR TO THE DATE (THE “**RESALE RESTRICTION TERMINATION DATE**”) THAT IS [IN THE CASE OF RULE 144A NOTES: TWO YEARS] [IN THE CASE OF REGULATION S NOTES: 40 DAYS] AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH BEST BUY CO., INC. (THE “**COMPANY**”) OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS NOTE (OR ANY PREDECESSOR OF SUCH NOTE), ONLY (A) TO THE COMPANY, (B) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT 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 PURSUANT TO RULE 144A, (C) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (D) TO AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS AN INSTITUTIONAL ACCREDITED INVESTOR ACQUIRING THE NOTE FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF THE NOTES OF \$500,000, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR OFFER OR SALE IN CONNECTION WITH ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR (F) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT SUBJECT TO THE COMPANY’S AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (C), (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL,

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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.

## DTC LEGEND

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“**DTC**”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS A BENEFICIAL INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE ARE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE ARE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE TRANSFER PROVISIONS OF THE INDENTURE.

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Regulation S Certificate

Wells Fargo Bank, N.A.  
Corporate Trust Services  
625 Marquette Avenue, 11<sup>th</sup> Floor  
Minneapolis, Minnesota 55402

Re: Best Buy Co., Inc.  
6.75% Notes due 2013 (the “**Notes**”)  
Issued under the Indenture as supplemented by the First  
Supplemental Indenture thereto relating to the Notes (the  
“**Indenture**”), each dated as of June 24, 2008

Dear Sirs:

Terms are used in this Certificate as used in Regulation S (“**Regulation S**”) under the Securities Act of 1933, as amended (the “**Securities Act**”), except as otherwise stated herein.

*[CHECK A OR B AS APPLICABLE.]*

- A. This Certificate relates to our proposed transfer of \$ \_\_\_\_\_ principal amount of Notes issued under the Indenture. We hereby certify as follows:
1. The offer and sale of the Notes was not and will not be made to a person in the United States (unless such person is excluded from the definition of “**U.S. person**” pursuant to Rule 902(k)(2)(vi) or the account held by it for which it is acting is excluded from the definition of “**U.S. person**” pursuant to Rule 902(k)(2)(i) under the circumstances described in Rule 902(g)(3)) and such offer and sale was not and will not be specifically targeted at an identifiable group of U.S. citizens abroad.
  2. Unless the circumstances described in the parenthetical in paragraph 1 above are applicable, either (a) at the time the buy order was originated, the buyer was outside the United States or we and any person acting on our behalf reasonably believed that the buyer was outside the United States or (b) the transaction was executed in, on or through the facilities of a designated offshore securities market, and neither we nor any person acting on our behalf knows that
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the transaction was pre-arranged with a buyer in the United States.

3. Neither we, any of our affiliates, nor any person acting on our or their behalf has made any directed selling efforts in the United States with respect to the Notes.
4. The proposed transfer of Notes is not part of a plan or scheme to evade the registration requirements of the Securities Act.
5. If we are a dealer or a person receiving a selling concession, fee or other remuneration in respect of the Notes, and the proposed transfer takes place during the Restricted Period (as defined in the Indenture), or we are an officer or director of the Company or an Initial Purchaser (as defined in the Indenture), we certify that the proposed transfer is being made in accordance with the provisions of Rule 904(b) of Regulation S.

B. This Certificate relates to our proposed exchange of \$            principal amount of Notes issued under the Indenture for an equal principal amount of Notes to be held by us. We hereby certify as follows:

1. At the time the offer and sale of the Notes was made to us, either (i) we were not in the United States or (ii) we were excluded from the definition of "U.S. person" pursuant to Rule 902(k)(2)(vi) or the account held by the Company for which we were acting was excluded from the definition of "U.S. person" pursuant to Rule 902(k)(2)(i) under the circumstances described in Rule 902(g)(3); and we were not a member of an identifiable group of U.S. citizens abroad.
2. Unless the circumstances described in paragraph 1(ii) above are applicable, either (a) at the time our buy order was originated, we were outside the United States or (b) the transaction was executed in, on or through the facilities of a designated offshore securities market and we did not prearrange the transaction in the United States.
3. The proposed exchange of Notes is not part of a plan or scheme to evade the registration requirements of the Securities Act.

You and the Company are entitled to rely upon this Certificate and are irrevocably authorized to produce this Certificate or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[NAME OF SELLER (FOR  
TRANSFERS) OR OWNER (FOR  
EXCHANGES)]

By: \_\_\_\_\_

Name:

Title:

Address:

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

Rule 144A Certificate

Wells Fargo Bank, N.A.  
 Corporate Trust Services  
 625 Marquette Avenue, 11<sup>th</sup> Floor  
 Minneapolis, Minnesota 55402

Re: Best Buy Co., Inc.  
 6.75% Notes due 2013 (the “**Notes**”)  
 Issued under the Indenture as supplemented by the First  
 Supplemental Indenture thereto relating to the Notes (the  
 “**Indenture**”), each dated as of June 24, 2008

Ladies and Gentlemen:

TO BE COMPLETED BY PURCHASER IF (1) ABOVE IS CHECKED.

This Certificate relates to:

*[CHECK A OR B AS APPLICABLE.]*

- A. Our proposed purchase of \$            principal amount of Notes issued under the Indenture.
- B. Our proposed exchange of \$            principal amount of Notes issued under the Indenture for an equal principal amount of Notes to be held by us.

We and, if applicable, each account for which we are acting in the aggregate owned and invested more than \$100,000,000 in securities of issuers that are not affiliated with the Company (or such accounts, if applicable), as of           , 20           , which is a date on or since close of our most recent fiscal year. We and, if applicable, each account for which we are acting, are a qualified institutional buyer within the meaning of Rule 144A (“**Rule 144A**”) under the Securities Act of 1933, as amended (the “**Securities Act**”). If we are acting on behalf of an account, we exercise sole investment discretion with respect to such account. We are aware that the transfer of Notes to us, or such exchange, as applicable, is being made in reliance upon the exemption from the provisions of Section 5 of the Securities Act provided by Rule 144A. Prior to the date of this Certificate we have received such information regarding the Company as we have requested pursuant to Rule 144A(d)(4) or have determined not to request such information.

You and the Company are entitled to rely upon this Certificate and are irrevocably authorized to produce this Certificate or a copy hereof to any

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interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[NAME OF PURCHASER (FOR  
TRANSFERS) OR OWNER (FOR  
EXCHANGES)]

By: \_\_\_\_\_  
Name:  
Title:  
Address:

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

[COMPLETE FORM I OR FORM II AS APPLICABLE.]

[FORM I]

Certificate of Beneficial Ownership

To: Wells Fargo Bank, N.A.  
Corporate Trust Services  
625 Marquette Avenue, 11<sup>th</sup> Floor  
Minneapolis, Minnesota 55402 *OR*

[Euroclear Bank S.A./N.V., as operator of the Euroclear System] *OR*

[Clearstream Banking S.A.]

Re: Best Buy Co., Inc.  
6.75% Notes due 2013 (the “**Notes**”)  
Issued under the Indenture as supplemented by the First  
Supplemental Indenture thereto relating to the Notes (the  
“**Indenture**”), each dated as of June 24, 2008

Ladies and Gentlemen:

We are the beneficial owner of \$ \_\_\_\_\_ principal amount of Notes issued under the Indenture and represented by a Restricted Regulation S Global Note (as defined in the Indenture).

We hereby certify as follows:

[CHECK A OR B AS APPLICABLE.]

- A. We are a non-U.S. person (within the meaning of Regulation S under the Securities Act of 1933, as amended).
- B. We are a U.S. person (within the meaning of Regulation S under the Securities Act of 1933, as amended) that purchased the Notes in a transaction that did not require registration under the Securities Act of 1933, as amended.

You and the Company are entitled to rely upon this Certificate and are irrevocably authorized to produce this Certificate or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.



Very truly yours,

[NAME OF BENEFICIAL OWNER]

By: \_\_\_\_\_  
Name:  
Title:  
Address:

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

Certificate of Beneficial Ownership

To: Wells Fargo Bank, N.A.  
Corporate Trust Services  
625 Marquette Avenue, 11<sup>th</sup> Floor  
Minneapolis, Minnesota 55402

Re: Best Buy Co., Inc.  
6.75% Notes due 2013 (the “**Notes**”)  
Issued under the Indenture as supplemented by the First Supplemental  
Indenture thereto relating to the Notes (the “**Indenture**”), each dated as of  
June 24, 2008

Ladies and Gentlemen:

This is to certify that based solely on certifications we have received in writing, by tested telex or by electronic transmission from member organizations (“**Member Organizations**”) appearing in our records as persons being entitled to a portion of the principal amount of Notes represented by a Restricted Regulation S Global Note issued under the above-referenced Indenture, that as of the date hereof, \$ principal amount of Notes represented by the Restricted Regulation S Global Note being submitted herewith for exchange is beneficially owned by persons that are either (i) non-U.S. persons (within the meaning of Regulation S under the Securities Act of 1933, as amended) or (ii) U.S. persons that purchased the Notes in a transaction that did not require registration under the Securities Act of 1933, as amended.

We further certify that (i) we are not submitting herewith for exchange any portion of such Restricted Regulation S Global Note excepted in such Member Organization certifications and (ii) as of the date hereof we have not received any notification from any Member Organization to the effect that the statements made by such Member Organization with respect to any portion of such Restricted Regulation S Global Note submitted herewith for exchange are no longer true and cannot be relied upon as of the date hereof.

You and the Company are entitled to rely upon this Certificate and are irrevocably authorized to produce this Certificate or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Yours faithfully,

[EUROCLEAR BANK S.A./N.V., as  
operator of the Euroclear System]

*OR*

[CLEARSTREAM BANKING S.A.]

By: \_\_\_\_\_  
Name:  
Title:  
Address:

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

## REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT dated as of June 24, 2008 (the "Agreement") is entered into by and among Best Buy Co., Inc., a Minnesota corporation (the "Company"), J.P. Morgan Securities Inc. ("JPMorgan") and Goldman, Sachs & Co. for themselves and on behalf of the other initial purchasers identified in the Purchase Agreement (defined below) (the "Initial Purchasers").

Preamble

The Company and the Initial Purchasers are parties to the Purchase Agreement dated June 19, 2008 (the "Purchase Agreement"), which provides for the sale by the Company to the Initial Purchasers of \$500,000,000 aggregate principal amount of the Company's 6.75% Notes due 2013 (the "Securities"). As an inducement to the Initial Purchasers to enter into the Purchase Agreement, the Company has agreed to provide to the Initial Purchasers and their direct and indirect transferees the registration rights set forth in this Agreement. The execution and delivery of this Agreement is a condition to the closing under the Purchase Agreement.

In consideration of the foregoing, the parties hereto agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Business Day" shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

"Company" shall have the meaning set forth in the preamble of this Agreement and shall also include the Company's successors.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

"Exchange Dates" shall have the meaning set forth in Section 2(a)(ii) hereof.

"Exchange Offer" shall mean the exchange offer by the Company of Exchange Securities for Registrable Securities pursuant to Section 2(a) hereof.

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“Exchange Offer Registration” shall mean a registration under the Securities Act effected pursuant to Section 2(a) hereof.

“Exchange Offer Registration Statement” shall mean an exchange offer registration statement on Form S-4 (or, if applicable, on another appropriate form) and all amendments and supplements to such registration statement, in each case including the Prospectus contained therein or deemed a part thereof, all exhibits thereto and any document incorporated by reference therein.

“Exchange Securities” shall mean the 6.75% Notes due 2013 issued by the Company under the Indenture containing terms substantially identical to the Securities (except that the Exchange Securities will not be subject to restrictions on transfer or to any increase in annual interest rate for failure to comply with this Agreement) and to be offered to Holders of Securities in exchange for Securities pursuant to the Exchange Offer.

“Free Writing Prospectus” shall mean each free writing prospectus (as defined in Rule 405 under the Securities Act) prepared by or on behalf of the Company or used or referred to by the Company in connection with the sale of the Securities or the Exchange Securities.

“Holders” shall mean the Initial Purchasers, for so long as they own any Registrable Securities, and each of their successors, assigns and direct and indirect transferees who become owners of Registrable Securities under the Indenture; provided that for purposes of Sections 4 and 5 of this Agreement, the term “Holders” shall include Participating Broker-Dealers.

“Indemnified Person” shall have the meaning set forth in Section 5(d) hereof.

“Indemnifying Person” shall have the meaning set forth in Section 5(d) hereof.

“Indenture” shall mean the Indenture dated as of June 24, 2008 between the Company and Wells Fargo Bank, N.A., as trustee, as supplemented by the first supplemental indenture thereto dated June 24, 2008 relating to the Securities, and as the same may be amended from time to time in accordance with the terms thereof.

“Initial Purchasers” shall have the meaning set forth in the preamble of this Agreement.

“Inspector” shall have the meaning set forth in Section 3(a)(xiii) hereof.

“Issue Date” shall mean June 24, 2008 (being the original issuance date of the Securities).

“Issuer Information” shall have the meaning set forth in Section 5(a) hereof.

“JPMorgan” shall have the meaning set forth in the preamble of this Agreement.

“Majority Holders” shall mean the Holders of a majority of the aggregate principal amount of the outstanding Registrable Securities; provided that whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, any Registrable Securities owned directly or indirectly by the Company or any of its affiliates (as such term is defined in Rule 405 under the Securities Act) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage or amount; and provided, further, that if the Company shall issue any additional Securities under the Indenture prior to consummation of the Exchange Offer or, if applicable, the effectiveness of any Shelf Registration Statement, such additional Securities and the Registrable Securities to which this Agreement relates shall be treated together as one class for purposes of determining whether the consent or approval of Holders of a specified percentage of Registrable Securities has been obtained.

“Participating Broker-Dealers” shall have the meaning set forth in Section 4(a) hereof.

“Person” shall mean an individual, partnership, limited liability company, corporation, trust or unincorporated organization, or a government or agency or political subdivision thereof.

“Prospectus” shall mean the prospectus included in, or, pursuant to the rules and regulations of the Securities Act, deemed a part of, a Registration Statement, including any preliminary prospectus, and any such prospectus as amended or supplemented by any prospectus supplement, including a prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by a Shelf Registration Statement, and by all other amendments and supplements to such prospectus, and in each case including any document incorporated by reference therein.

“Purchase Agreement” shall have the meaning set forth in the preamble of this Agreement.

“Registrable Securities” shall mean the Securities; provided that the Securities shall cease to be Registrable Securities upon the earliest of (i) a Registration Statement with respect to such Securities becoming effective under the Securities Act and such Securities being exchanged or disposed of pursuant

to such Registration Statement, (ii) two years after the Issue Date and (iii) such Securities having ceased to be outstanding.

“Registration Expenses” shall mean any and all expenses incident to performance of or compliance by the Company with this Agreement, including without limitation: (i) all SEC, stock exchange or Financial Industry Regulatory Authority registration and filing fees, (ii) all fees and expenses incurred in connection with compliance with state securities or blue sky laws (including reasonable and documented fees and disbursements of counsel for any Underwriters or Holders in connection with blue sky qualification of any Exchange Securities or Registrable Securities), (iii) all expenses of any Persons in preparing or assisting in preparing, word processing, printing and distributing any Registration Statement, any Prospectus, any Free Writing Prospectus and any amendments or supplements thereto, any underwriting agreements, securities sales agreements or other similar agreements and any other documents relating to the performance of and compliance with this Agreement, (iv) all rating agency fees, (v) all fees and disbursements relating to the qualification of the Indenture under applicable securities laws, (vi) the reasonable and documented fees and disbursements of the Trustee and its counsel, (vii) the fees and disbursements of counsel for the Company and, in the case of a Shelf Registration Statement, the reasonable and documented fees and disbursements of one counsel for the Holders (which counsel shall be selected by the Majority Holders and which counsel may also be counsel for the Initial Purchasers), and (viii) the fees and disbursements of the registered public accounting firm of the Company, fees and disbursements relating to any “comfort” letters required by or incident to the performance of and compliance with this Agreement, but excluding fees and expenses of counsel to the Underwriters (other than fees and expenses set forth in clause (ii) above) or the Holders and underwriting discounts and commissions, brokerage commissions and transfer taxes, if any, relating to the sale or disposition of Registrable Securities by a Holder.

“Registration Statement” shall mean any registration statement of the Company that covers any of the Exchange Securities or Registrable Securities pursuant to the provisions of this Agreement and all amendments and supplements to any such registration statement, including post-effective amendments, in each case including the Prospectus contained therein or deemed a part thereof, all exhibits thereto and any document incorporated by reference therein.

“SEC” shall mean the Securities and Exchange Commission.

“Securities” shall have the meaning set forth in the preamble of this Agreement.

“Securities Act” shall mean the Securities Act of 1933, as amended from time to time.

“Shelf Additional Interest Date” shall have the meaning set forth in Section 2(f) hereof.

“Shelf Effectiveness Period” shall have the meaning set forth in Section 2(b) hereof.

“Shelf Registration” shall mean a registration effected pursuant to Section 2(b) hereof.

“Shelf Registration Statement” shall mean a “shelf” registration statement of the Company that covers all or a portion of the Registrable Securities (but no other securities unless approved by a majority of the Holders whose Registrable Securities are to be covered by such Shelf Registration Statement) on an appropriate form under Rule 415 under the Securities Act, or any similar rule that may be adopted by the SEC, and all amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein or deemed a part thereof, all exhibits thereto and any document incorporated by reference therein.

“Shelf Request” shall have the meaning set forth in Section 2(b) hereof.

“Staff” shall mean the staff of the SEC.

“Target Registration Date” shall have the meaning set forth in Section 2(d) hereof.

“Trust Indenture Act” shall mean the Trust Indenture Act of 1939, as amended from time to time.

“Trustee” shall mean the trustee with respect to the Securities under the Indenture.

“Underwriter” shall have the meaning set forth in Section 3(e) hereof.

“Underwritten Offering” shall mean an offering in which Registrable Securities are sold to an Underwriter for reoffering to the public.

2. Registration Under the Securities Act. (a) To the extent not prohibited by any applicable law or applicable interpretations of the Staff and except in the circumstances contemplated by Section 2(b)(i) below, the Company shall use its reasonable best efforts to (i) cause to be filed an Exchange Offer Registration Statement covering an offer to the Holders to exchange all the Registrable Securities for Exchange Securities and (ii) have such Registration Statement remain effective until 90 days after the last Exchange Date for use by one or more Participating Broker-Dealers. The Company shall commence the



Exchange Offer promptly after the Exchange Offer Registration Statement is declared effective by the SEC and use its reasonable best efforts to complete the Exchange Offer not later than 60 days after such effective date.

The Company shall commence the Exchange Offer by mailing the related Prospectus, appropriate letters of transmittal and other accompanying documents to each Holder stating, in addition to such other disclosures as are required by applicable law:

- (i) that the Exchange Offer is being made pursuant to this Agreement and that all Registrable Securities validly tendered and not properly withdrawn will be accepted for exchange;
- (ii) the dates of acceptance for exchange (which shall be a period of at least 20 Business Days from the date such notice is mailed) (the "Exchange Dates");
- (iii) that any Registrable Security not tendered will remain outstanding and continue to accrue interest but will not retain any rights under this Agreement;
- (iv) that any Holder electing to have a Registrable Security exchanged pursuant to the Exchange Offer will be required to (A) surrender such Registrable Security, together with the appropriate letters of transmittal, to the institution and at the address (located in the Borough of Manhattan, The City of New York) and in the manner specified in the notice, or (B) effect such exchange otherwise in compliance with the applicable procedures of the depository for such Registrable Security, in each case prior to the close of business on the last Exchange Date; and
- (v) that any Holder will be entitled to withdraw its election, not later than the close of business on the last Exchange Date, by (A) sending to the institution and at the address (located in the Borough of Manhattan, The City of New York) specified in the notice, a telegram, telex, facsimile transmission or letter setting forth the name of such Holder, the principal amount of Registrable Securities delivered for exchange and a statement that such Holder is withdrawing its election to have such Securities exchanged or (B) effecting such withdrawal in compliance with the applicable procedures of the depository for the Registrable Securities.

As a condition to participating in the Exchange Offer, a Holder will be required to represent to the Company that (i) any Exchange Securities to be received by it will be acquired in the ordinary course of its business, (ii) at the time of the commencement of the Exchange Offer it has no arrangement or understanding with any Person to participate in the distribution (within the meaning of the Securities Act) of the Exchange Securities in violation of the

provisions of the Securities Act, (iii) it is not an “affiliate” (within the meaning of Rule 405 under the Securities Act) of the Company and (iv) if such Holder is a broker-dealer that will receive Exchange Securities for its own account in exchange for Registrable Securities that were acquired as a result of market-making or other trading activities, then such Holder will deliver a Prospectus (or, to the extent permitted by law, make available a Prospectus to purchasers) in connection with any resale of such Exchange Securities.

As soon as practicable after the last Exchange Date, the Company shall:

- (i) accept for exchange Registrable Securities or portions thereof validly tendered and not properly withdrawn pursuant to the Exchange Offer; and
- (ii) deliver, or cause to be delivered, to the Trustee for cancellation all Registrable Securities or portions thereof so accepted for exchange by the Company and issue, and cause the Trustee to promptly authenticate and deliver to each Holder, Exchange Securities equal in principal amount to the principal amount of the Registrable Securities tendered by such Holder.

The Company shall use its reasonable best efforts to complete the Exchange Offer as provided above and shall comply with the applicable requirements of the Securities Act, the Exchange Act and other applicable laws and regulations in connection with the Exchange Offer.

(b) In the event that (i) the Company determines that the Exchange Offer Registration provided for in Section 2(a) above is not permitted or may not be completed as soon as practicable after the last Exchange Date because it would violate any applicable law or applicable interpretations of the Staff, (ii) the Exchange Offer is not for any other reason completed by January 31, 2009 or (iii) upon receipt of a written request (a “Shelf Request”) from any Initial Purchaser representing that it holds Registrable Securities that are or were ineligible to be exchanged in the Exchange Offer, the Company shall use its reasonable best efforts to cause to be filed as soon as practicable after such determination, date or Shelf Request, as the case may be, a Shelf Registration Statement providing for the sale of all the Registrable Securities by the Holders thereof and to have such Shelf Registration Statement become effective.

In the event that the Company is required to file a Shelf Registration Statement pursuant to clause (iii) of the preceding paragraph, the Company shall use its reasonable best efforts to file and have become effective both an Exchange Offer Registration Statement pursuant to Section 2(a) with respect to all Registrable Securities and a Shelf Registration Statement (which may be a combined Registration Statement with the Exchange Offer Registration Statement) with respect to offers and sales of Registrable Securities held by the Initial Purchasers after completion of the Exchange Offer.

The Company agrees to use its reasonable best efforts to keep the Shelf Registration Statement continuously effective until two years from the Issue Date or such shorter period that will terminate when all the Registrable Securities covered by the Shelf Registration Statement have been sold pursuant to the Shelf Registration Statement (the "Shelf Effectiveness Period"). The Company further agrees to supplement or amend the Shelf Registration Statement, the related Prospectus and any Free Writing Prospectus if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement or by the Securities Act or by any other rules and regulations thereunder or if reasonably requested by a Holder of Registrable Securities with respect to information relating to such Holder, and to use its reasonable best efforts to cause any such amendment to become effective, if required, and such Shelf Registration Statement, Prospectus or Free Writing Prospectus, as the case may be, to become usable as soon as thereafter practicable. The Company agrees to furnish to the Holders of Registrable Securities covered by the Shelf Registration Statement copies of any such supplement or amendment promptly after its being used or filed with the SEC.

(c) The Company shall pay all Registration Expenses in connection with any registration pursuant to Section 2(a) or Section 2(b) hereof. Each Holder shall pay all underwriting discounts and commissions, brokerage commissions and transfer taxes, if any, relating to the sale or disposition of such Holder's Registrable Securities pursuant to the Shelf Registration Statement.

(d) An Exchange Offer Registration Statement pursuant to Section 2(a) hereof will not be deemed to have become effective unless it has been declared effective by the SEC. A Shelf Registration Statement pursuant to Section 2(b) hereof will not be deemed to have become effective unless it has been declared effective by the SEC or is automatically effective upon filing with the SEC as provided by Rule 462 under the Securities Act.

(e) In the event that either the Exchange Offer is not completed or the Shelf Registration Statement, if required pursuant to Section 2(b)(i) or 2(b)(ii) hereof, does not become effective on or prior to January 31, 2009 (the "Target Registration Date"), the interest rate on the Registrable Securities will be increased by (i) 0.25% per annum for the first 90-day period immediately following the Target Registration Date and (ii) an additional 0.25% per annum with respect to each subsequent 90-day period, up to a maximum of 0.50% per annum, in each case until the earliest of (1) the Exchange Offer being completed, (2) the Shelf Registration Statement, if required hereby, becoming effective and (3) two years from the Issue Date, at which time the increased interest shall cease to accrue. In the event that the Company receives a Shelf Request pursuant to Section 2(b)(iii), and the Shelf Registration Statement required to be filed thereby does not become effective by the later of (x) the Target Registration

Date or (y) 90 days after the delivery of such Shelf Request (such later date, the "Shelf Additional Interest Date"), then the interest rate on the Registrable Securities to be covered by the Shelf Registration Statement will be increased by (i) 0.25% per annum for the first 90-day period immediately following the Shelf Additional Interest Date and (ii) an additional 0.25% per annum with respect to each subsequent 90-day period, up to a maximum of 0.50% per annum, in each case until the earlier of (a) the Shelf Registration Statement becoming effective and (b) the Securities becoming freely tradable under the Securities Act, at which time the increased interest shall cease to accrue.

If the Shelf Registration Statement, if required hereby, has become effective and thereafter either ceases to be effective or the Prospectus contained therein ceases to be usable, in each case whether or not permitted by this Agreement, at any time during the Shelf Effectiveness Period, and such failure to remain effective or usable exists for more than 30 consecutive calendar days in any 12 month period or 60 calendar days, whether or not consecutive, in any 12-month period, then the interest rate on the Registrable Securities will be increased by 0.25% per annum for the first 90-day period commencing on the 31st day in such 12-month period or the 61st day in such 12 month period, as applicable, and (ii) an additional 0.25% per annum with respect to each subsequent 90-day period and ending, in the case of clauses (i) and (ii) on such date that the Shelf Registration Statement has again become effective or the Prospectus again becomes usable, up to a maximum of 0.50% per annum, at which time the increased interest rate shall cease to accrue.

(f) Without limiting the remedies available to the Initial Purchasers and the Holders, the Company acknowledges that any failure by the Company to comply with its obligations under Section 2(a) and Section 2(b) hereof may result in material irreparable injury to the Initial Purchasers or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Initial Purchasers or any Holder may seek such relief as may be required to specifically enforce the Company's obligations under Section 2 (a) and Section 2(b) hereof.

3. Registration Procedures. (a) In connection with its obligations pursuant to Section 2(a) and Section 2(b) hereof, the Company shall promptly:

(i) prepare and file with the SEC a Registration Statement on the appropriate form under the Securities Act, which form (x) shall be selected by the Company, (y) shall, in the case of a Shelf Registration, be available for the sale of the Registrable Securities by the selling Holders thereof and (z) shall comply as to form in all material respects with the requirements of the applicable form and include all financial statements required by the SEC to be filed therewith; and use its reasonable best efforts to cause such Registration Statement to become

effective and remain effective for the applicable period in accordance with Section 2 hereof;

(ii) prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep such Registration Statement effective for the applicable period in accordance with Section 2 hereof and cause each Prospectus to be supplemented by any required prospectus supplement and, as so supplemented, to be filed pursuant to Rule 424 under the Securities Act; and keep each Prospectus current during the period described in Section 4(3) of and Rule 174 under the Securities Act that is applicable to transactions by brokers or dealers with respect to the Registrable Securities or Exchange Securities;

(iii) to the extent any Free Writing Prospectus is used, file with the SEC any Free Writing Prospectus that is required to be filed by the Company with the SEC in accordance with the Securities Act and to retain any Free Writing Prospectus not required to be filed;

(iv) in the case of a Shelf Registration, furnish to each Holder of Registrable Securities, to counsel for the Initial Purchasers, to counsel for such Holders and to each Underwriter of an Underwritten Offering of Registrable Securities, if any, without charge, as many copies of each Prospectus, preliminary prospectus or Free Writing Prospectus, and any amendment or supplement thereto, as such Holder, counsel or Underwriter may reasonably request in order to facilitate the sale or other disposition of the Registrable Securities thereunder; and the Company consents to the use of such Prospectus, preliminary prospectus, Free Writing Prospectus and any amendment or supplement thereto in accordance with applicable law by each of the Holders of Registrable Securities and any such Underwriters in connection with the offering and sale of the Registrable Securities covered by and in the manner described in such Prospectus, preliminary prospectus or Free Writing Prospectus or any amendment or supplement thereto in accordance with applicable law;

(v) use its reasonable best efforts to register or qualify the Registrable Securities under all applicable state securities or blue sky laws of such jurisdictions as any Holder of Registrable Securities covered by a Registration Statement shall reasonably request in writing reasonably in advance of the time the applicable Registration Statement becomes effective; cooperate with such Holders in connection with any filings required to be made with the Financial Industry Regulatory Authority; and do any and all other acts and things that may be reasonably necessary or advisable to enable each Holder to complete the disposition in each such jurisdiction of the Registrable Securities owned by such Holder; provided that the Company shall not be required to (1) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify, (2) file any

general consent to service of process in any such jurisdiction or (3) subject itself to taxation in any such jurisdiction if it is not so subject;

(vi) in the case of a Shelf Registration, notify each Holder of Registrable Securities and counsel for such Holders and counsel for the Initial Purchasers promptly and, if requested by any such Holder or counsel, confirm such advice in writing (1) when a Registration Statement has become effective, when any post-effective amendment thereto has been filed, becomes effective and when any Free Writing Prospectus has been filed or any amendment or supplement to the Prospectus or any Free Writing Prospectus has been filed, (2) of any request by the SEC or any state securities authority for amendments and supplements to a Registration Statement, Prospectus or any Free Writing Prospectus or for additional information after the Registration Statement has become effective, (3) of the issuance by the SEC or any state securities authority of any stop order suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose, including the receipt by the Company of any notice of objection of the SEC to the use of a Shelf Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act, (4) if, between the applicable effective date of a Shelf Registration Statement and the closing of any sale of Registrable Securities covered thereby, the representations and warranties of the Company contained in any underwriting agreement, securities sales agreement or other similar agreement, if any, relating to an offering of such Registrable Securities cease to be true and correct in all material respects or if the Company receives any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation of any proceeding for such purpose, (5) of the happening of any event during the period a Shelf Registration Statement is effective that makes any statement made in such Shelf Registration Statement or the related Prospectus untrue in any material respect or that requires the making of any changes in such Shelf Registration Statement, Prospectus or any Free Writing Prospectus in order to make the statements therein not misleading and (6) of any determination by the Company that a post-effective amendment to a Registration Statement or any amendment or supplement to the Prospectus or any Free Writing Prospectus would be appropriate;

(vii) use its reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement or, in the case of a Shelf Registration, the resolution of any objection of the SEC pursuant to Rule 401(g)(2), including by filing an amendment to such Shelf Registration Statement on the proper form, as soon as practicable and provide prompt notice to each Holder of the withdrawal of any such order or such resolution;

(viii) in the case of a Shelf Registration, furnish to each Holder of Registrable Securities, without charge, at least one conformed copy of each Registration Statement and any post-effective amendment thereto (without any

documents incorporated therein by reference or exhibits thereto, unless requested);

(ix) in the case of a Shelf Registration, cooperate with the Holders of Registrable Securities to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends and enable such Registrable Securities to be issued in such denominations and registered in such names (consistent with the provisions of the Indenture) as the selling Holders may reasonably request at least five Business Days prior to the closing of any sale of Registrable Securities;

(x) in the case of a Shelf Registration, upon the occurrence of any event contemplated by Section 3(a)(v)(5) hereof, use its reasonable best efforts to prepare and file with the SEC a supplement or post-effective amendment to such Shelf Registration Statement or the related Prospectus or any Free Writing Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities, such Prospectus or Free Writing Prospectus, as the case may be, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and the Company shall notify the Holders of Registrable Securities to suspend use of the Prospectus or any Free Writing Prospectus as promptly as practicable after the occurrence of such an event, and such Holders hereby agree to suspend use of the Prospectus or any Free Writing Prospectus until the Company has amended or supplemented the Prospectus or any Free Writing Prospectus to correct such misstatement or omission;

(xi) a reasonable time prior to the filing of any Registration Statement, any Prospectus or any Free Writing Prospectus, any amendment to a Registration Statement, amendment or supplement to a Prospectus or any Free Writing Prospectus or of any document that is to be incorporated by reference into a Registration Statement or a Prospectus or Free Writing Prospectus, as the case may be, after initial filing of a Registration Statement, provide copies of such document to the Initial Purchasers and their counsel (and, in the case of a Shelf Registration Statement, to the Holders of Registrable Securities and their counsel) and make such of the representatives of the Company as shall be reasonably requested by the Initial Purchasers or their counsel (and, in the case of a Shelf Registration Statement, the Holders of Registrable Securities or their counsel) available for discussion of such document; and the Company shall not, at any time after initial filing of a Registration Statement, use or file any Prospectus, any Free Writing Prospectus, any amendment of or supplement to a Registration Statement or a Prospectus or a Free Writing Prospectus, or any document that is to be incorporated by reference into a Registration Statement, a Prospectus or a Free Writing Prospectus of which the Initial Purchasers and their counsel (and, in the case of a Shelf Registration Statement, the Holders of

Registrable Securities and their counsel) shall not have previously been advised and furnished a copy or to which the Initial Purchasers or their counsel (and, in the case of a Shelf Registration Statement, the Holders of Registrable Securities or their counsel) shall reasonably object;

(xii) obtain a CUSIP number for all Exchange Securities or Registrable Securities, as the case may be, not later than the initial effective date of a Registration Statement;

(xiii) cause the Indenture to be qualified under the Trust Indenture Act in connection with the registration of the Exchange Securities or Registrable Securities, as the case may be; cooperate with the Trustee and the Holders to effect such changes to the Indenture as may be required for the Indenture to be so qualified in accordance with the terms of the Trust Indenture Act; and execute, and use its reasonable best efforts to cause the Trustee to execute, all documents as may be required to effect such changes and all other forms and documents required to be filed with the SEC to enable the Indenture to be so qualified in a timely manner;

(xiv) in the case of a Shelf Registration, make available for inspection by a representative of the Holders of the Registrable Securities (an "Inspector"), any Underwriter participating in any disposition pursuant to such Shelf Registration Statement, any attorneys and accountants designated by a majority of the Holders of Registrable Securities to be included in such Shelf Registration and any attorneys and accountants designated by such Underwriter, at reasonable times and in a reasonable manner, all pertinent financial and other records, documents and properties of the Company and its subsidiaries, and cause the respective officers, directors and employees of the Company to supply all information reasonably requested by any such Inspector, Underwriter, attorney or accountant in connection with a Shelf Registration Statement; provided that if any such information is identified by the Company as being confidential or proprietary, each Person receiving such information shall take such actions as are reasonably necessary to protect the confidentiality of such information to the extent such action is otherwise not inconsistent with, an impairment of or in derogation of the rights and interests of any Inspector, Holder or Underwriter);

(xv) if reasonably requested by any Holder of Registrable Securities covered by a Shelf Registration Statement, promptly include or incorporate in a Prospectus supplement or post-effective amendment such information with respect to such Holder as such Holder reasonably requests to be included or incorporated therein and make all required filings of such Prospectus supplement or such post-effective amendment as soon as the Company has received notification of the matters to be so included or incorporated in such filing; and

(xvi) in the case of a Shelf Registration, enter into such customary agreements and take all such other actions in connection therewith (including



those reasonably requested by the Holders of a majority in principal amount of the Registrable Securities covered by the Shelf Registration Statement) in order to expedite or facilitate the disposition of such Registrable Securities including, but not limited to, an Underwritten Offering and in such connection, (1) to the extent possible, make such representations and warranties to the Holders and any Underwriters of such Registrable Securities with respect to the business of the Company and its subsidiaries and the Registration Statement, Prospectus, any Free Writing Prospectus and documents incorporated by reference or deemed incorporated by reference, if any, in each case, in form, substance and scope as are customarily made by issuers to underwriters in underwritten offerings and confirm the same if and when requested, (2) obtain opinions of counsel to the Company (which counsel and opinions, in form, scope and substance, shall be reasonably satisfactory to the Holders and such Underwriters and their respective counsel) addressed to each selling Holder and Underwriter of Registrable Securities, covering the matters customarily covered in opinions requested in underwritten offerings, (3) obtain “comfort” letters from the independent registered public accounting firm of the Company (and, if necessary, any other independent registered public accounting firm of any subsidiary of the Company, or of any business acquired by the Company for which financial statements and financial data are or are required to be included in the Registration Statement) addressed to each selling Holder (to the extent permitted by applicable professional standards) and Underwriter of Registrable Securities, such letters to be in customary form and covering matters of the type customarily covered in “comfort” letters in connection with underwritten offerings, including but not limited to financial information contained in any preliminary prospectus, Prospectus or Free Writing Prospectus and (4) deliver such documents and certificates as may be reasonably requested by the Holders of a majority in principal amount of the Registrable Securities being sold or the Underwriters, and which are customarily delivered in underwritten offerings, to evidence the continued validity of the representations and warranties of the Company made pursuant to clause (1) above and to evidence compliance with any customary conditions contained in an underwriting agreement.

(b) In the case of a Shelf Registration Statement, the Company may require each Holder of Registrable Securities to furnish to the Company such information regarding such Holder and the proposed disposition by such Holder of such Registrable Securities as the Company may from time to time reasonably request in writing.

(c) In the case of a Shelf Registration Statement, each Holder of Registrable Securities covered in such Shelf Registration Statement agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(a)(v)(3) or 3(a)(v)(5) hereof, such Holder will forthwith discontinue disposition of Registrable Securities pursuant to the Shelf Registration Statement until such Holder’s receipt of the copies of the supplemented or amended Prospectus or Free Writing Prospectus contemplated

by Section 3(a)(ix) hereof and, if so directed by the Company, such Holder will deliver to the Company all copies in its possession, other than permanent file copies then in such Holder's possession, of the Prospectus or Free Writing Prospectus covering such Registrable Securities that is current at the time of receipt of such notice.

(d) If the Company shall give any notice to suspend the disposition of Registrable Securities pursuant to a Registration Statement, the Company shall extend the period during which such Registration Statement shall be maintained effective pursuant to this Agreement by the number of days during the period from and including the date of the giving of such notice to and including the date when the Holders of such Registrable Securities shall have received copies of the supplemented or amended Prospectus or Free Writing Prospectus necessary to resume such dispositions. The Company may give any such notice only twice during any 365-day period and any such suspensions shall not exceed 30 days for each suspension and there shall not be more than two suspensions in effect during any 365-day period.

(e) The Holders of Registrable Securities covered by a Shelf Registration Statement who desire to do so may sell such Registrable Securities in an Underwritten Offering. In any such Underwritten Offering, the investment bank or investment banks and manager or managers (each an "Underwriter") that will administer the offering will be selected by the Holders of a majority in principal amount of the Registrable Securities included in such offering and shall be reasonably satisfactory to the Company.

4. **Participation of Broker-Dealers in Exchange Offer.** (a) The Staff has taken the position that any broker-dealer that receives Exchange Securities for its own account in the Exchange Offer in exchange for Securities that were acquired by such broker-dealer as a result of market-making or other trading activities (a "Participating Broker-Dealer") may be deemed to be an "underwriter" within the meaning of the Securities Act and must deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such Exchange Securities.

The Company understands that it is the Staff's position that if the Prospectus contained in the Exchange Offer Registration Statement includes a plan of distribution containing a statement to the above effect and the means by which Participating Broker-Dealers may resell the Exchange Securities, without naming the Participating Broker-Dealers or specifying the amount of Exchange Securities owned by them, such Prospectus may be delivered by Participating Broker-Dealers to satisfy their prospectus delivery obligation under the Securities Act in connection with resales of Exchange Securities for their own accounts, so long as the Prospectus otherwise meets the requirements of the Securities Act.

(b) In light of the above, and notwithstanding the other provisions of this Agreement, the Company agrees to amend or supplement the Prospectus contained in the Exchange Offer Registration Statement for a period of up to 90 days after the last Exchange Date (as such period may be extended pursuant to Section 3(d) of this Agreement) if requested by the Initial Purchasers or by one or more Participating Broker-Dealers, in order to expedite or facilitate the disposition of any Exchange Securities by Participating Broker-Dealers consistent with the positions of the Staff recited in Section 4 (a) above. The Company further agrees that Participating Broker-Dealers shall be authorized to deliver such Prospectus during such period in connection with the resales contemplated by this Section 4.

(c) The Initial Purchasers shall have no liability to the Company or any Holder with respect to any request that they may make pursuant to Section 4(b) above.

5. Indemnification and Contribution. (a) The Company agrees to indemnify and hold harmless each Initial Purchaser and each Holder, their respective affiliates, directors and officers and each Person, if any, who controls any Initial Purchaser or any Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, legal fees and other expenses reasonably incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of, or are based upon, (1) any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or any omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein not misleading, or (2) any untrue statement or alleged untrue statement of a material fact contained in any Prospectus, any Free Writing Prospectus or any "issuer information" ("Issuer Information") filed or required to be filed pursuant to Rule 433(d) under the Securities Act, or any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to any Initial Purchaser or information relating to any Holder furnished to the Company in writing through JPMorgan or Goldman, Sachs & Co. or any selling Holder, respectively, expressly for use therein. In connection with any Underwritten Offering permitted by Section 3, the Company will also indemnify the Underwriters, if any, selling brokers, dealers and similar securities industry professionals participating in the distribution, their respective affiliates and each Person who controls such Persons (within the meaning of the Securities Act and the Exchange Act) to the same extent as provided above with respect to the indemnification of the Holders, if requested in connection with any

Registration Statement, any Prospectus, any Free Writing Prospectus or any Issuer Information.

(b) Each Holder agrees, severally and not jointly, to indemnify and hold harmless the Company, the Initial Purchasers and the other selling Holders, the directors of the Company, each officer of the Company who signed the Registration Statement and each Person, if any, who controls the Company, any Initial Purchaser and any other selling Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the indemnity set forth in paragraph (a) above, but only with respect to any losses, claims, damages or liabilities that arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to such Holder furnished to the Company in writing by such Holder expressly for use in any Registration Statement, any Prospectus and any Free Writing Prospectus. In connection with any Underwritten Offering permitted by Section 3, the Underwriters will enter into agreements providing for the indemnification of the Company in form and substance customary for underwritten offerings of that type.

(c) If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Person in respect of which indemnification may be sought pursuant to Section 5(a) or 5(b) above, such Person (the "Indemnified Person") shall promptly notify the Person against whom such indemnification may be sought (the "Indemnifying Person") in writing; provided that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have under this Section 5 except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided, further, that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have to an Indemnified Person otherwise than under this Section 5. If any such proceeding shall be brought or asserted against an Indemnified Person and it shall have notified the Indemnifying Person thereof, the Indemnifying Person shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others entitled to indemnification pursuant to this Section 5 that the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary; (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the

Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood and agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred. Any such separate firm (x) for any Initial Purchaser, its affiliates, directors and officers and any control Persons of such Initial Purchaser shall be designated in writing jointly by JPMorgan and Goldman, Sachs & Co., (y) for any Holder, its directors and officers and any control Persons of such Holder shall be designated in writing by the Majority Holders and (z) in all other cases shall be designated in writing by the Company. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Person shall have requested that an Indemnifying Person reimburse the Indemnified Person for fees and expenses of counsel as contemplated by this paragraph, the Indemnifying Person shall be liable for any settlement of any proceeding effected without its written consent if (i) the Indemnifying Person shall not have responded to such written request, (ii) such settlement is entered into more than 30 days after receipt by the Indemnifying Person of such request on terms and conditions not less favorable than those set forth in such written request and (iii) the Indemnifying Person shall not have reimbursed the Indemnified Person in accordance with such request prior to the date of such settlement. No Indemnifying Person shall, without the written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnification could have been sought hereunder by such Indemnified Person, unless such settlement (A) includes an unconditional release of such Indemnified Person, in form and substance reasonably satisfactory to such Indemnified Person, from all liability on claims that are the subject matter of such proceeding and (B) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

(e) If the indemnification provided for in Section 5(a), 5(b) and 5(c) above is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company from the offering of the Securities and the Exchange Securities, on the one hand, and by the Holders from receiving Securities or Exchange Securities

registered under the Securities Act, on the other hand, or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company on the one hand and the Holders on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative fault of the Company on the one hand and the Holders on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Holders and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(f) The Company and the Holders agree that it would not be just and equitable if contribution pursuant to this Section 5 were determined by pro rata allocation (even if the Holders were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (e) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph (e) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Person in connection with any such action or claim. Notwithstanding the provisions of this Section 5, in no event shall a Holder be required to contribute any amount in excess of the amount by which the total price at which the Securities or Exchange Securities sold by such Holder exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The Holders' obligations to contribute pursuant to this Section 5 are several and not joint.

(g) The remedies provided for in this Section 5 are not exclusive and shall not limit any rights or remedies that may otherwise be available to any Indemnified Person at law or in equity.

(h) The indemnity and contribution provisions contained in this Section 5 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of the Initial Purchasers or any Holder or any Person controlling any Initial Purchaser or any Holder, or by or on behalf of the Company or the officers or directors of or any Person controlling the Company, (iii) acceptance of any of the Exchange Securities and (iv) any sale of Registrable Securities pursuant to a Shelf Registration Statement.

6. General.

(a) *No Inconsistent Agreements.* The Company represents and warrants to, and agrees with, the Initial Purchasers that (i) the rights granted to the Holders hereunder do not in any way conflict with and are not inconsistent with the rights granted to the holders of any other outstanding securities issued or guaranteed by the Company under any other agreement and (ii) the Company has not entered into, or on or after the date of this Agreement will not enter into, any agreement that is inconsistent with the rights granted to the Holders of Registrable Securities in this Agreement or otherwise conflicts with the provisions hereof.

(b) *Amendments and Waivers.* The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given unless the Company has obtained the written consent of Holders of at least a majority in aggregate principal amount of the outstanding Registrable Securities affected by such amendment, modification, supplement, waiver or consent; provided that no amendment, modification, supplement, waiver or consent to any departure from the provisions of Section 5 hereof shall be effective as against any Holder of Registrable Securities unless consented to in writing by such Holder. Any amendments, modifications, supplements, waivers or consents pursuant to this Section 6(b) shall be by a writing executed by each of the parties hereto.

(c) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, registered first-class mail, telex, telecopier, or any courier guaranteeing overnight delivery (i) if to a Holder, at the most current address given by such Holder to the Company by means of a notice given in accordance with the provisions of this Section 6(c), which address initially is, with respect to the Initial Purchasers, the address set forth in the Purchase Agreement; (ii) if to the Company, initially at the Company's address set forth in the Purchase Agreement and thereafter at such other address, notice of which is given in accordance with the provisions of this Section 6(c); and (iii) to such other persons at their respective addresses as provided in the Purchase Agreement and thereafter at such other address, notice of which is given in accordance with the provisions of this Section 6(c). All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt is acknowledged, if telecopied; and on the next Business Day if timely delivered to an air courier guaranteeing overnight delivery. Copies of all such notices, demands or other communications shall be concurrently delivered by the Person giving the same to the Trustee, at the address specified in the Indenture.

(d) *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the successors, assigns and transferees of each of the

parties, including, without limitation and without the need for an express assignment, subsequent Holders; provided that nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Purchase Agreement or the Indenture. If any transferee of any Holder shall acquire Registrable Securities in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all the terms of this Agreement, and by taking and holding such Registrable Securities such Person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement and such Person shall be entitled to receive the benefits hereof. The Initial Purchasers (in their capacity as Initial Purchasers) shall have no liability or obligation to the Company with respect to any failure by a Holder to comply with, or any breach by any Holder of, any of the obligations of such Holder under this Agreement.

(e) *Third Party Beneficiaries.* Each Holder shall be a third party beneficiary to the agreements made hereunder between the Company, on the one hand, and the Initial Purchasers, on the other hand, and shall have the right to enforce such agreements directly to the extent it deems such enforcement necessary or advisable to protect its rights or the rights of other Holders hereunder.

(f) *Counterparts.* This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(g) *Headings.* The headings in this Agreement are for convenience of reference only, are not a part of this Agreement and shall not limit or otherwise affect the meaning hereof.

(h) *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

(i) *Entire Agreement; Severability.* This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes all oral statements and prior writings with respect thereto. If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable or against public policy, the remainder of the terms, provisions, covenants and restrictions contained herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated. The Company and the Initial Purchasers shall endeavor in good faith negotiations to replace the invalid, void or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, void or unenforceable provisions.



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

BEST BUY CO., INC.

By: /s/ Ryan D. Robinson

Name: Ryan D. Robinson

Title: Senior Vice President, U.S. SBU CFO and Treasurer

Confirmed and accepted as of the date first above written:

J.P. MORGAN SECURITIES INC.

By /s/ Maria Sraneck, Executive Director

Authorized Signatory

/s/ Goldman, Sachs & Co.

(Goldman, Sachs & Co.)

For themselves and on behalf of the  
several Initial Purchasers

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