
**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): January 8, 2019

Colfax Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-34045
(Commission
File Number)

54-1887631
(I.R.S. Employer
Identification No.)

420 National Business Parkway, 5th Floor
Annapolis Junction, MD
(Address of Principal Executive Offices)

20701
(Zip Code)

Registrant's telephone number, including area code (301) 323-9090

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))

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

On January 8, 2019, Colfax Corporation (the “Company”) entered into an underwriting agreement (the “Underwriting Agreement”), dated January 8, 2019, among the Company and J.P. Morgan Securities LLC and Credit Suisse Securities (USA) LLC, as representatives (the “Representatives”) of the several underwriters named in Schedule 1 thereto (the “Underwriters”), pursuant to which the Company agreed to sell 4,000,000 5.75% tangible equity units (the “Units”) at a public offering price of \$100.00 per Unit (the “Offering”). In connection with the Offering, the Company granted the Underwriters a 13-day option to purchase up to an additional 600,000 Units, solely to cover over-allotments, if any (the “Option”). The Underwriting Agreement includes customary representations, warranties and covenants by the Company. Under the terms of the Underwriting Agreement, the Company has agreed to indemnify the Underwriters against certain liabilities.

On January 9, 2019, the Representatives notified the Company, on behalf of the Underwriters, that the Underwriters had elected to exercise their Option in full. As a result, the Company issued and sold a total of 4,600,000 Units, including 600,000 Units for which the Option had been exercised in full. The Offering closed on January 11, 2019.

Certain of the Underwriters and their respective affiliates have, from time to time, performed, and may in the future perform, various financial advisory and investment banking services for the Company in the ordinary course of their respective businesses, for which they received or will receive customary fees and expenses. J.P. Morgan Securities LLC has acted as the Company’s financial adviser in connection with the Acquisition (as defined below). Affiliates of several of the Underwriters are lenders under the Company’s term loan and revolving credit facilities, as well as lenders under the Company’s bridge loan facility.

The sale of Units was made pursuant to the Company’s Registration Statement on Form S-3 (Registration No. 333-223067), including a prospectus supplement dated January 8, 2019, to the prospectus contained therein dated February 16, 2018, filed by the Company with the Securities and Exchange Commission, pursuant to Rule 424(b)(5) under the Securities Act of 1933, as amended.

Units

The Company issued the Units and Purchase Contracts (as defined below) under a purchase contract agreement (the “Purchase Contract Agreement”), dated as of January 11, 2019, between the Company and U.S. Bank National Association, as purchase contract agent, as attorney-in-fact for holders of Purchase Contracts (as defined below) and as trustee under the indenture referred to below. The Company issued the Amortizing Notes (as defined below) under an indenture dated as of January 11, 2019 (the “Base Indenture”), as supplemented by a supplemental indenture dated as of January 11, 2019 (the “Supplemental Indenture” and, together with the Base Indenture, the “Indenture”), each between the Company and U.S. Bank National Association, as trustee.

Each Unit offered is comprised of (i) a prepaid stock purchase contract issued by the Company (each, a “Purchase Contract”) pursuant to which the Company will deliver to the holder, not later than January 15, 2022 (subject to postponement in certain limited circumstances, the “mandatory settlement date”), unless earlier redeemed or settled, a number of shares of the Company’s common stock (“Common Stock”) per Purchase Contract equal to the settlement rate described below, and (ii) a senior amortizing note issued by the Company (each, an “Amortizing Note”) with an initial principal amount of \$15.6099 that pays equal quarterly installments of \$1.4375 per Amortizing Note (except for the April 15, 2019 installment payment, which will be \$1.5014 per Amortizing Note), which cash payment in the aggregate will be equivalent to 5.75% per year with respect to the \$100 stated amount per Unit.

Purchase Contracts

Unless previously redeemed or settled at the holder's or the Company's option, for each Purchase Contract the Company will deliver to holders on January 15, 2022 (subject to postponement in certain limited circumstances described below, the "mandatory settlement date") a number of shares of Common Stock. The number of shares of Common Stock issuable upon settlement of each Purchase Contract (the "settlement rate") will be determined as follows:

- if the Applicable Market Value (as defined below) of the Common Stock is greater than the threshold appreciation price of approximately \$25.00, then the holder will receive 4.0000 shares of Common Stock for each Purchase Contract (the "minimum settlement rate");
- if the Applicable Market Value of the Common Stock is greater than or equal to the reference price of approximately \$20.81, but less than or equal to the threshold appreciation price, then the holder will receive a number of shares of Common Stock for each Purchase Contract having a value, based on the Applicable Market Value, equal to \$100; and
- if the Applicable Market Value of the Common Stock is less than the reference price, then the holder will receive 4.8054 shares of Common Stock for each Purchase Contract (the "maximum settlement rate").

The "Applicable Market Value" means the arithmetic average of the Daily VWAPs (as defined in the Purchase Contract Agreement) of the Company's Common Stock on each of the 20 consecutive trading days beginning on, and including, the 21st scheduled trading day immediately preceding January 15, 2022. The minimum settlement rate, the maximum settlement rate and the reference price are each subject to adjustment as set forth in the Purchase Contract Agreement.

At any time prior to 5:00 p.m., New York City time, on the second scheduled trading day immediately preceding January 15, 2022, a holder of Purchase Contracts may settle any or all of its Purchase Contracts early, in which case the Company will deliver a number of shares of Common Stock per Purchase Contract equal to the minimum settlement rate, which is subject to adjustment as set forth in the Purchase Contract Agreement. In addition, at any time prior to the second scheduled trading day immediately preceding January 15, 2022, if a "Fundamental Change" (as defined in the Purchase Contract Agreement) occurs, holders may settle any or all of their Purchase Contracts early. If a holder elects to settle its Purchase Contracts early in connection with such Fundamental Change, it will receive a number of shares of Common Stock based on the "Fundamental Change Early Settlement Rate" as defined in, and in accordance with, the Purchase Contract Agreement. In either case, upon early settlement at a holder's election of a Purchase Contract that is a component of a Unit, the corresponding Amortizing Note will remain outstanding and beneficially owned by or registered in the name of, as the case may be, the holder who elected to settle the related Purchase Contract early.

If the closing of the previously announced acquisition by the Company of DJO Global, Inc. (the "Acquisition") has not occurred on or prior to May 19, 2019, the Company may elect to redeem all, but not less than all, of the outstanding Purchase Contracts for the applicable redemption amount by delivering notice during the five business day period immediately following May 19, 2019, as set forth in the Purchase Contract Agreement. If the agreement and plan of merger for the Acquisition is terminated prior to May 19, 2019, the Company may elect to redeem all, but not less than all, of the outstanding Purchase Contracts for the applicable redemption amount by delivering notice on or prior to the 40th scheduled trading day immediately preceding May 19, 2019 or during the five business day period immediately following May 19, 2019, as set forth in the Purchase Contract Agreement. In each case, holders will have the right to require the Company to repurchase their Amortizing Notes on the terms set forth in the Supplemental Indenture.

Amortizing Notes

Each Amortizing Note will have an initial principal amount of \$15.6099, will bear interest at a rate of 6.50% per annum and will have a final installment payment date of January 15, 2022. On each January 15, April 15, July 15 and October 15, commencing on April 15, 2019, the company will pay equal quarterly cash installments of \$1.4375 per Amortizing Note (except for the April 15, 2019 installment payment, which will be \$1.5014 per Amortizing Note), which will constitute a payment of interest and a partial repayment of principal, and which cash payment in the aggregate per year will be equivalent to 5.75% per year with respect to the \$100 stated amount per Unit. The Amortizing Notes will be the direct, unsecured and unsubordinated obligations of the Company and will rank equally with all of the existing and future other unsecured and unsubordinated indebtedness of the Company.

If the Company elects to settle the Purchase Contracts early or in the event of a merger termination redemption as described above, holders of Amortizing Notes will have the right to require the Company to repurchase their Amortizing Notes for cash at the repurchase price set forth in the Supplemental Indenture.

The Indenture contains customary terms and covenants, including that upon certain events of default occurring and continuing, either the trustee or the holders of not less than 25% in aggregate principal amount of the Amortizing Notes then outstanding may declare the unpaid principal of the Amortizing Notes and any accrued and unpaid interest thereon immediately due and payable. In the case of certain events of bankruptcy, insolvency or reorganization relating to the Company, the principal amount of the Amortizing Notes together with any accrued and unpaid interest thereon will automatically become and be immediately due and payable.

General

Each Unit may be separated into its constituent Purchase Contract and Amortizing Note after the initial issuance date of the Units, and the separate components may be combined to create a Unit, in each case in accordance with the terms of the Purchase Contract Agreement.

The Company has applied to list the Units on the New York Stock Exchange under the symbol "CFXA," subject to satisfaction of its minimum listing standards with respect to the Units. If approved for listing, the Company expects trading on the New York Stock Exchange to begin within 30 calendar days. However, the Company will not initially apply to list the separate Purchase Contracts or the separate Amortizing Notes on any securities exchange or automated inter-dealer quotation system.

The Company intends to use the net proceeds from these offerings, together with additional debt financing and cash on hand, to finance the Acquisition and to pay related fees and expenses. If for any reason the Acquisition is not consummated, then the Company intends to use the net proceeds from these offerings, after payment of any cash redemption amount and/or repurchase price relating to the Units, for general corporate purposes.

The foregoing descriptions of the Units, the Purchase Contracts and the Amortizing Notes are summaries and are not meant to be complete descriptions of the Units, the Purchase Contracts and the Amortizing Notes. Each summary is qualified in its entirety by the Purchase Contract Agreement (including the forms of Unit and Purchase Contract), the Base Indenture and the Supplemental Indenture (including the form of Amortizing Note), as applicable, which are filed as Exhibits 4.1, 4.4 and 4.5, respectively, to this Current Report and are incorporated herein by reference as though each were fully set forth herein.

Gibson, Dunn & Crutcher LLP, counsel to the Company, has issued an opinion dated January 11, 2019 regarding the validity of the Units, Purchase Contracts and Amortizing Notes. A copy of the opinion is filed as Exhibit 5.1 to this Current Report.

Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements that are based on the Company's management's current expectations. Such forward-looking statements are subject to certain risks, uncertainties and assumptions, including, without limitation, prevailing market conditions and other factors. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those expected. More information about potential risk factors that could affect the Company and its results is included in the Company's filings with the SEC.

In connection with the Offering, as described in response to Item 1.01 of this Current Report on Form 8-K, the following exhibits are filed with this Current Report on Form 8-K and are incorporated by reference herein and into the Registration Statement:

- (i) the Underwriting Agreement;
- (ii) the Purchase Contract Agreement;
- (iii) the form of Unit;
- (iv) the form of Purchase Contract;
- (v) the Base Indenture;
- (vi) the Supplemental Indenture;
- (vii) the form of Amortizing Note; and
- (viii) the opinion of Gibson, Dunn & Crutcher LLP and related consent.

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

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

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

- 1.1 [Underwriting Agreement, dated as of January 8, 2019, among Colfax Corporation and J.P. Morgan Securities LLC and Credit Suisse Securities \(USA\) LLC, as representatives of the several underwriters named in Schedule 1 thereto.](#)
- 4.1 [Purchase Contract Agreement dated as of January 11, 2019, by and between Colfax Corporation and U.S. Bank National Association, as purchase contract agent, custodial agent and securities intermediary.](#)
- 4.2 [Form of Unit \(incorporated by reference to Exhibit 4.1 hereto\).](#)
- 4.3 [Form of Purchase Contract \(incorporated by reference to Exhibit 4.1 hereto\).](#)
- 4.4 [Indenture dated as of January 11, 2019, by and between Colfax Corporation and U.S. Bank National Association, as trustee.](#)
- 4.5 [First Supplemental Indenture, dated as of January 11, 2019, between Colfax Corporation and U.S. Bank National Association, as trustee.](#)
- 4.6 [Form of Amortizing Note due 2022 \(incorporated herein by reference to Exhibit 4.5 hereto\).](#)
- 5.1 [Opinion of Gibson, Dunn & Crutcher LLP.](#)
- 23.1 [Consent of Gibson, Dunn & Crutcher LLP \(included in Exhibit 5.1 hereto\).](#)

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.

Date: January 11, 2019

COLFAX CORPORATION

By: /s/ Christopher Hix

Name: Christopher Hix

Title: Senior Vice President, Finance, Chief Financial Officer and
Treasurer

COLFAX CORPORATION

5.75% Tangible Equity Units

Underwriting Agreement

January 8, 2019

J.P. MORGAN SECURITIES LLC
CREDIT SUISSE SECURITIES (USA) LLC

as Representatives of the
several Underwriters listed
in Schedule 1 hereto

c/o J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179

c/o Credit Suisse Securities (USA) LLC
Eleven Madison Avenue
New York, New York 10010

Ladies and Gentlemen:

Colfax Corporation, a Delaware corporation (the "Company"), proposes to issue and sell to the several underwriters listed in Schedule 1 hereto (the "Underwriters"), for whom you are acting as representatives (the "Representatives"), an aggregate of 4,000,000 5.75% tangible equity units, at a stated amount of \$100.00 per tangible equity unit (the "Units"), of the Company (the "Underwritten Securities"). In addition, the Company proposes to issue and sell, at the option of the Underwriters, up to an additional 600,000 5.75% tangible equity units of the Company (the "Option Securities"). The Underwritten Securities and the Option Securities are herein referred to as the "Securities".

Each Security has a stated amount of \$100.00 (the "Stated Amount") and consists of (1) a prepaid stock purchase contract (each, a "Purchase Contract") under which the holder has purchased and the Company will agree to deliver not later than January 15, 2022, subject to postponement in certain circumstances and subject to any early settlement or redemption of such Purchase Contract pursuant to the provisions thereof and of the purchase contract agreement (the "Purchase Contract Agreement"), to be dated as of the Closing Date (as defined herein), among the Company, U.S. Bank National Association, as purchase contract agent (the "Purchase Contract Agent") and attorney-in-fact for the holders of the Purchase Contracts from time to time, and U.S. Bank National Association, as trustee (the "Trustee"), a number of shares of common stock of the Company, par value \$0.001 per share (the "Common Stock"), determined pursuant to the terms of the Purchase Contracts and the Purchase Contract Agreement and (2) a

senior amortizing note with a final installment payment date of January 15, 2022 (each, an “Amortizing Note”) issued by the Company, which will have an initial principal amount of \$15.6099 and will pay equal quarterly cash installments of \$1.4375 per Amortizing Note (except for the April 15, 2019 installment payment, which will be \$1.5014 per Amortizing Note), which in the aggregate would be equivalent to 5.75% per year on the Stated Amount per Security. All references herein to the Securities include references to the Purchase Contracts and the Amortizing Notes comprising the Securities, unless the context requires otherwise.

The Amortizing Notes will be issued pursuant to an indenture, dated as of Closing Date (the “Base Indenture”), between the Company and the Trustee, as supplemented by that certain supplemental indenture, between the Company and the Trustee, dated as of the Closing Date (the “Supplemental Indenture” and, together with the Base Indenture, the “Indenture”). The Securities and the Purchase Contracts will be issued pursuant to the Purchase Contract Agreement.

The offering of the Securities, the issuance of the Purchase Contracts, the issuance of the Amortizing Notes and the issuance of the Issuable Common Stock (as defined below) upon the settlement of the Purchase Contracts in accordance with the terms of the Purchase Contracts and the Purchase Contract Agreement are referred to herein collectively as the “Transactions.” This Agreement, the Securities, the Purchase Contracts, the Amortizing Notes, the Purchase Contract Agreement, the Base Indenture and the Supplemental Indenture are referred to herein as the “Transaction Documents.”

Pursuant to the agreement and plan of merger (together with all exhibits, annexes, schedules and other disclosure letters thereto, collectively, as modified, amended, supplemented, consented to or waived, the “Merger Agreement”) dated as of November 19, 2018, as may be amended from time to time, by and among the Company, its newly formed acquisition subsidiary, Motion Merger Sub, Inc., a Delaware corporation (the “Merger Sub”), DJO Global, Inc., a Delaware corporation (the “Target”) and Grand Slam Holdings, LLC, a Delaware limited liability company solely in its capacity as Securityholder Representative (as defined therein), the Merger Sub will merge with and into the Target (the “Merger”) with the Target as the surviving entity in the Merger and continuing as an indirect subsidiary of the Company (the “Acquisition”).

The Company hereby confirms its agreement with the several Underwriters concerning the purchase and sale of the Securities, as follows:

1. Registration Statement. The Company has prepared and filed with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder (collectively, the “Securities Act”), a registration statement (File No. 333-223067), including a prospectus, relating to the Securities, the Issuable Common Stock (as defined below), the Purchase Contracts and the Amortizing Notes. Such registration statement, as amended at the time it became effective, including the information, if any, deemed pursuant to Rule 430A, 430B or 430C under the Securities Act to be part of the registration statement at the time of its effectiveness (“Rule 430 Information”), is referred to herein as the “Registration Statement”; and as used herein, the term “Preliminary Prospectus” means each prospectus included in such registration statement (and any amendments thereto) before effectiveness, any prospectus filed with the Commission pursuant to Rule 424(a)

under the Securities Act and the prospectus included in the Registration Statement at the time of its effectiveness that omits Rule 430 Information, and the term “Prospectus” means the prospectus in the form first used (or made available upon request of purchasers pursuant to Rule 173 under the Securities Act) in connection with confirmation of sales of the Securities. If the Company has filed an abbreviated registration statement pursuant to Rule 462(b) under the Securities Act (the “Rule 462 Registration Statement”), then any reference herein to the term “Registration Statement” shall be deemed to include such Rule 462 Registration Statement. Any reference in this underwriting agreement (this “Agreement”) to the Registration Statement, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, as of the effective date of the Registration Statement or the date of such Preliminary Prospectus or the Prospectus, as the case may be, and any reference to “amend”, “amendment” or “supplement” with respect to the Registration Statement, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any documents filed after such date under the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder (collectively, the “Exchange Act”) that are deemed to be incorporated by reference therein. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Registration Statement and the Prospectus.

At or prior to the Applicable Time (as defined below), the Company had prepared the following information (collectively with the pricing information set forth on Annex A-1, the “Pricing Disclosure Package”): an Amended Preliminary Prospectus dated January 8, 2019 and each “free-writing prospectus” (as defined pursuant to Rule 405 under the Securities Act) listed on Annex A-1 hereto.

“Applicable Time” means 5:30 P.M., New York City time, on January 8, 2019.

2. Purchase of the Securities. (a) The Company agrees to issue and sell the Underwritten Securities to the several Underwriters as provided in this Agreement, and each Underwriter, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, agrees, severally and not jointly, to purchase from the Company the respective number of Underwritten Securities set forth opposite such Underwriter’s name in Schedule 1 hereto at a purchase price of \$97.00 per tangible equity unit (the “Purchase Price”).

In addition, the Company agrees to issue and sell the Option Securities to the several Underwriters as provided in this Agreement, and the Underwriters, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, shall have the option to purchase, severally and not jointly, from the Company the Option Securities at the Purchase Price. If any Option Securities are to be purchased, the number of Option Securities to be purchased by each Underwriter shall be the number of Option Securities which bears the same ratio to the aggregate number of Option Securities being purchased as the number of Underwritten Securities set forth opposite the name of such Underwriter in Schedule 1 hereto (or such number increased as set forth in Section 10 hereof) bears to the aggregate number of Underwritten Securities being purchased from the Company by the several Underwriters, subject, however, to such adjustments to eliminate any fractional Securities as the Representatives in their sole discretion shall make.

The Underwriters may exercise the option to purchase Option Securities at any time in whole, or from time to time in part, on or before the thirteenth day following the date of the Prospectus, by written notice from the Representatives to the Company. Such notice shall set forth the aggregate number of Option Securities as to which the option is being exercised and the date and time when the Option Securities are to be delivered and paid for, which may be the same date and time as the Closing Date (as hereinafter defined) but shall not be earlier than the Closing Date nor later than (x) the tenth full business day (as hereinafter defined) after the date of such notice (unless such time and date are postponed in accordance with the provisions of Section 10 hereof) or (y) the twelfth day after the date of the Closing Date, whichever occurs first. Any such notice shall be given at least two business days prior to the date and time of delivery specified therein.

(b) The Company understands that the Underwriters intend to make a public offering of the Securities, and initially to offer the Securities on the terms set forth in the Pricing Disclosure Package. The Company acknowledges and agrees that the Underwriters may offer and sell Securities to or through any affiliate of an Underwriter.

(c) Payment for the Securities shall be made by wire transfer in immediately available funds to the accounts specified by the Company, to the Representatives in the case of the Underwritten Securities, at the offices of Latham & Watkins LLP at 10:00 A.M. New York City time on January 11, 2019 or at such other time or place on the same or such other date, not later than the fifth business day thereafter, as the Representatives and the Company may agree upon in writing or, in the case of the Option Securities, on the date and at the time and place specified by the Representatives in the written notice of the Underwriters' election to purchase such Option Securities. The time and date of such payment for the Underwritten Securities is referred to herein as the "Closing Date", and the time and date for such payment for the Option Securities, if other than the Closing Date, is herein referred to as the "Additional Closing Date".

Payment for the Securities to be purchased on the Closing Date or the Additional Closing Date, as the case may be, shall be made against delivery to the Representatives for the respective accounts of the several Underwriters of the Securities to be purchased on such date or the Additional Closing Date, as the case may be, with any transfer taxes payable in connection with the sale of such Securities duly paid by the Company. Delivery of the Securities shall be made through the facilities of The Depository Trust Company ("DTC") unless the Representatives shall otherwise instruct. The certificates for the Securities will be made available for inspection and packaging by the Representatives at the office of DTC or its designated custodian not later than 1:00 P.M., New York City time, on the business day prior to the Closing Date or the Additional Closing Date, as the case may be.

(d) The Company acknowledges and agrees that the Representatives and the other Underwriters are acting solely in the capacity of an arm's length contractual counterparty to the Company with respect to the offering of Securities contemplated hereby (including in connection with determining the terms of the offering) and not as a financial advisor or a fiduciary to, or an agent of, the Company or any other person. Additionally, neither the Representatives nor any other Underwriter is advising the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Company shall consult with its own advisors concerning such matters and each shall be responsible for

making its own independent investigation and appraisal of the transactions contemplated hereby, and neither the Representatives nor any other Underwriter shall have any responsibility or liability to the Company with respect thereto. Any review by the Representatives and the other Underwriters of the Company, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Representatives and the other Underwriters and shall not be on behalf of the Company.

3. Representations and Warranties of the Company. The Company represents and warrants to each Underwriter that:

(a) *Preliminary Prospectus*. No order preventing or suspending the use of any Preliminary Prospectus has been issued by the Commission, and each Preliminary Prospectus included in the Pricing Disclosure Package, at the time of filing thereof, complied in all material respects with the Securities Act, and no Preliminary Prospectus, at the time of filing thereof, contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation or warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in any Preliminary Prospectus, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 7(b) hereof.

(b) *Pricing Disclosure Package*. The Pricing Disclosure Package as of the Applicable Time did not, and as of the Closing Date and as of the Additional Closing Date, as the case may be, will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation or warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in such Pricing Disclosure Package, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 7(b) hereof.

(c) *Issuer Free Writing Prospectus*. Other than the Registration Statement, the Preliminary Prospectus and the Prospectus, the Company (including its agents and representatives, other than the Underwriters in their capacity as such) has not prepared, made, used, authorized, approved or referred to and will not prepare, make, use, authorize, approve or refer to any "written communication" (as defined in Rule 405 under the Securities Act) that constitutes an offer to sell or solicitation of an offer to buy the Securities (each such communication by the Company or its agents and representatives (other than a communication referred to in clause (i) below) an "Issuer Free Writing Prospectus") other than (i) any document not constituting a prospectus pursuant to Section 2(a)(10)(a) of the Securities Act or Rule 134 under the Securities Act or (ii) the documents listed on Annex A hereto, each electronic road show and any other written communications approved in writing in advance by the Representatives. Each such Issuer Free Writing Prospectus complies in all material respects with the Securities Act, has been or will be (within the time period specified in Rule 433) filed in

accordance with the Securities Act (to the extent required thereby) and does not conflict with the information contained in the Registration Statement or the Pricing Disclosure Package, and, when taken together with the Preliminary Prospectus filed prior to the first use of such Issuer Free Writing Prospectus, did not, and as of the Closing Date and as of the Additional Closing Date, as the case may be, will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation or warranty with respect to any statements or omissions made in each such Issuer Free Writing Prospectus or Preliminary Prospectus in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in such Issuer Free Writing Prospectus or Preliminary Prospectus, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 7(b) hereof.

(d) *Registration Statement and Prospectus.* The Registration Statement is an “automatic shelf registration statement” as defined under Rule 405 of the Securities Act that has been filed with the Commission not earlier than three years prior to the date hereof; and no notice of objection of the Commission to the use of such registration statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act has been received by the Company. No order suspending the effectiveness of the Registration Statement has been issued by the Commission, and no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the offering of the Securities has been initiated or threatened by the Commission; as of the applicable effective date of the Registration Statement and any post-effective amendment thereto, the Registration Statement and any such post-effective amendment complied and will comply in all material respects with the Securities Act, and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading; and as of the date of the Prospectus and any amendment or supplement thereto and as of the Closing Date and as of the Additional Closing Date, as the case may be, the Prospectus will comply in all material respects with the Securities Act and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation or warranty with respect to any statements or omissions made with respect to (1) the Statement of Eligibility of the Trustee on Form T1 under the Trust Indenture Act of 1939 (the “Trust Indenture Act”) and (2) in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in the Registration Statement and the Prospectus and any amendment or supplement thereto, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 7(b) hereof.

(e) *Incorporated Documents.* The documents incorporated by reference in the Registration Statement, the Prospectus and the Pricing Disclosure Package, when they were filed with the Commission conformed in all material respects to the requirements of the Exchange Act, and none of such documents contained any untrue statement of a material fact or omitted 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 any further documents so filed and incorporated by reference in the Registration Statement, the Prospectus or the Pricing Disclosure Package, when such documents are filed with the Commission, will conform in all material respects to the requirements of the Exchange Act and 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.

(f) *Financial Statements.* (i) The financial statements (including the related notes thereto) of the Company and its consolidated subsidiaries included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as applicable, and present fairly in all material respects the financial position of the Company and its consolidated subsidiaries, as applicable, as of the dates indicated and the results of their operations, comprehensive loss, stockholders' equity and the changes in their cash flows for the periods specified; such financial statements have been prepared in conformity with generally accepted accounting principles ("GAAP") in the United States applied on a consistent basis throughout the periods covered thereby, and any related supporting schedules included or incorporated by reference in the Registration Statement present fairly in all material respects the information required to be stated therein; and the other financial information included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus relating to the Company and its subsidiaries has been derived from the accounting records of the Company and its consolidated subsidiaries and presents fairly in all material respects the information shown thereby; (ii) to the Company's knowledge, the financial statements (including the related notes thereto) of the Target and its subsidiaries included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as applicable, and present fairly in all material respects the financial position of the Target and its subsidiaries, as of the dates indicated and the results of their operations, comprehensive loss, stockholders' equity and the changes in their cash flows for the periods specified; such financial statements have been prepared in conformity with GAAP in the United States applied on a consistent basis throughout the periods covered thereby, and any related supporting schedules included or incorporated by reference in the Registration Statement present fairly in all material respects the information required to be stated therein; and, to the Company's knowledge, the other financial information relating to the Target and its subsidiaries included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus has been derived from the accounting records of the Target and its subsidiaries, and presents fairly in all material respects the information shown thereby; (iii) all disclosures included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of Commission) comply with Regulation G of the Exchange Act and Item 10 of Regulation S-K of the Securities Act, to the extent applicable; and (iv) the pro forma financial information and the related notes thereto included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus (x) have been prepared in accordance with the applicable requirements of the Securities Act and the Exchange Act and (y) the assumptions underlying such pro forma financial information included in the Registration Statement, the Pricing Disclosure Package and the Prospectus are reasonable and the adjustments used therein are appropriate to give effect to the transactions or circumstances referred to therein.

(g) *No Material Adverse Effect.* Since the date of the most recent financial statements of the Company included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (i) there has not been any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and the Company's subsidiaries taken as a whole, whether or not occurring in the ordinary course of business (a "Material Adverse Effect"), (ii) there has not been any material transaction entered into or any material transaction that is probable of being entered into by the Company or the Company's subsidiaries, other than transactions in the ordinary course of business and changes and transactions described in the Registration Statement, Pricing Disclosure Package and the Prospectus, (iii) neither the Company nor any of the Company's subsidiaries has sustained any loss or interference with its business that is material to the Company and the Company's subsidiaries taken as a whole and that is either from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority, (iv) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock, and (v) there has been no material adverse change in the capital stock, long-term indebtedness, or net assets of the Company or its subsidiaries.

(h) *Good Standing of the Company.* The Company has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, is duly qualified to do business and is in good standing in each jurisdiction in which its ownership or lease of property or the conduct of its business requires such qualification, and has corporate power and authority necessary to own or hold its properties and to conduct the business in which it is engaged, except where the failure to be so qualified or in good standing or have such power or authority would not reasonably be expected to result in a Material Adverse Effect.

(i) *Subsidiaries.* Each of the Company's subsidiaries has been duly incorporated or formed, as applicable, and is validly existing as a corporation, limited partnership or limited liability company, as applicable, duly qualified to do business and in good standing under the laws of the jurisdiction of its incorporation or formation, as applicable, and has corporate, partnership or limited liability company, as applicable, power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, except where the failure to be so qualified or in good standing or have such power or authority would not reasonably be expected to result in a Material Adverse Effect. Each of the Company's subsidiaries is duly qualified as a foreign corporation, limited partnership or limited liability company, as applicable, to transact business and is in good standing or equivalent status in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except for such jurisdictions where the failure to so qualify or to be in good standing would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All of the issued and outstanding capital stock or other ownership interest of each subsidiary has been duly authorized and validly issued, is fully paid and non-assessable and is owned by the Company directly or through subsidiaries, free and clear of any

security interest, mortgage, pledge, lien, encumbrance or claim, except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus. None of the outstanding shares of capital stock, limited liability company interests or limited partnership interests, as the case may be, of any subsidiary was issued in violation of the preemptive or similar rights of any securityholder, member or partner, as the case may be, of such subsidiary. The only subsidiaries of the Company are the subsidiaries listed on Exhibit B hereto.

(j) *Capitalization.* The Company has an authorized capitalization as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus under the heading “Capitalization”; all the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and are not subject to any pre-emptive or similar rights; except as described in or expressly contemplated by the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no outstanding rights (including, without limitation, pre-emptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in the Company or any of its subsidiaries, or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of the Company or any such subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options; the capital stock of the Company conforms in all material respects to the description thereof contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(k) *Due Authorization.* The Company has all requisite corporate power and authority to execute and deliver the Transaction Documents, to which it is a party and to perform its obligations hereunder and thereunder including, without limitation, to issue, sell and deliver the Securities and the shares of Common Stock to be issued and delivered by the Company pursuant to the Purchase Contract Agreement and the Purchase Contracts (the “Issuable Common Stock”); and the Company has duly and validly taken all corporate action required to be taken by it for the due and proper authorization, execution and delivery by it of this Agreement and each of the other Transaction Documents to which it is a party and the consummation of the Transactions.

(l) *Merger Agreement.* (i) The Merger Agreement has been duly and validly authorized, executed and delivered by the Company and Merger Sub and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding agreement of the Company and Merger Sub enforceable against the Company and Merger Sub, and in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors’ rights generally or by equitable principles relating to enforceability. (ii) To the knowledge of the Company, the representations and warranties of the Target contained in Article 4 of the Merger Agreement (as qualified therein and in the disclosure schedules thereto) were, as of the date of the Merger Agreement, and are, as of the date hereof, true and accurate in all material respects (or, if any such representations or warranties are qualified by materiality, material adverse effect or similar language, be true and correct in all respects).

(m) *The Securities*. The Securities to be issued and sold by the Company hereunder have been duly authorized by the Company and, when issued and delivered and paid for as provided herein, will be duly and validly issued; and the issuance of the Securities is not subject to any preemptive or similar rights.

(n) *Purchase Contract Agreement*. The Purchase Contract Agreement, when duly executed and delivered by the Company (assuming the Purchase Contract Agreement is a valid and binding obligation of the Purchase Contract Agent, as attorney-in-fact for the holders thereof and the Trustee), will be a legally binding and valid obligation of the Company, enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(o) *Indenture*. The Indenture has been duly authorized by the Company; when the Indenture has been duly executed and delivered by the Company (assuming that the Indenture is a valid and binding obligation of the Trustee), the Indenture will be a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms except as the enforceability thereof may be limited by the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing. The Indenture has been duly qualified under the Trust Indenture Act with respect to the Amortizing Notes.

(p) *Units*. The Units have been duly authorized and, on the Closing Date, when the Units have been issued, executed and authenticated in accordance with the provisions of the Purchase Contract Agreement and delivered to and paid for by the Underwriters in accordance with the terms of this Agreement, the Units will be entitled to the benefits of the Purchase Contract Agreement, and will be valid and binding obligations of the Company, enforceable in accordance with their terms, except as the enforceability thereof may be limited by the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(q) *Amortizing Notes*. The Amortizing Notes have been duly authorized and, on the Closing Date, when the Amortizing Notes have been issued, executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the Underwriters in accordance with the terms of this Agreement, the Amortizing Notes will be entitled to the benefits of the Indenture, and will be valid and binding obligations of the Company, enforceable in accordance with their terms except as the enforceability thereof may be limited by the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(r) *Issuable Common Stock.* The maximum number of shares of Issuable Common Stock (calculated assuming settlement of the Purchase Contracts at the “maximum settlement rate,” as such term is defined in the Disclosure Package) have been duly authorized and reserved for issuance by the Company and, when issued and delivered in accordance with the provisions of the Purchase Contracts and the Purchase Contract Agreement, will be validly issued, fully paid and nonassessable and not issued in violation of any preemptive or similar right and will conform in all material respects as to legal matters to the descriptions thereof contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(s) *Descriptions of the Transaction Documents.* Each Transaction Document conforms in all material respects to the description thereof contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(t) *Common Stock.* The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and the Company is subject to the reporting requirements of Section 13 of the Exchange Act and files reports with the Commission on the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. The Common Stock is listed on the New York Stock Exchange (“NYSE”). The Company will comply with the applicable requirements of the NYSE with respect to the issuance of the Securities.

(u) *Absence of Violations, Defaults and Conflicts.* Neither the Company nor any of its subsidiaries is (i) in violation of its charter, by-laws or similar organizational document, (ii) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of their respective subsidiaries is a party or by which it or any of them may be bound or to which any of the properties or assets of the Company or any of the Company’s subsidiaries is subject (collectively, “Agreements and Instruments”), except for such defaults that would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect, or (iii) in violation of any law, statute, rule, regulation, judgment, order, writ or decree of any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency having jurisdiction over the Company or any of the Company’s subsidiaries or any of their respective properties, assets or operations, whether federal, state, foreign or otherwise (each, a “Governmental Entity”), except for such violations that would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The execution, delivery and performance by the Company of each of the Transaction Documents, the issuance and sale of the Securities, Purchase Contracts and Amortizing Notes and the consummation of the transactions contemplated herein or the Disclosure Package and the Prospectus (including, without limitation, the issuance and delivery of Issuable Common Stock do not and will not whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Debt Repayment Triggering Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of the Company’s subsidiaries pursuant to, the Agreements and Instruments (except for such conflicts, breaches, defaults or Debt Repayment Triggering Events (as defined below) or liens, charges or encumbrances that would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect), nor will such action result in any violation of the provisions of the charter, by-laws or similar organizational document of the Company or any of the

Company's subsidiaries or any law, statute, rule, regulation, judgment, order, writ or decree of any Governmental Entity. As used herein, a "Debt Repayment Triggering Event" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of the Company's subsidiaries.

(v) *Absence of Further Requirements.* Each approval, consent, order, authorization, designation, declaration or filing by or registration with any regulatory, administrative or other governmental body necessary in connection with the execution and delivery by the Company of this Agreement and the consummation of the transactions contemplated by this Agreement and the other Transaction Documents in connection with the offering, issuance and sale of the Securities by the Company has been obtained or made and is in full force and effect, except for the registration of the Securities under the Securities Act and the Trust Indenture Act and such consents, approvals, authorizations, orders and registrations or qualifications as may be required by the Financial Industry Regulatory Authority, Inc. ("FINRA") and under applicable state securities laws in connection with the purchase and distribution of the Securities by the Underwriters.

(w) *Litigation.* Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there is no legal, governmental, administrative or regulatory investigation, action, suit, claim or proceeding pending or, to the knowledge of the Company, threatened against the Company or any of the Company's subsidiaries, or to which any property of the Company or the Company's subsidiaries is, or to the knowledge of the Company, would reasonably be expected to be, subject, before any court or regulatory or administrative agency or otherwise which if determined adversely to the Company or any of the Company's subsidiaries, as applicable, would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect or materially and adversely affect the consummation of the transactions contemplated by the Transaction Documents.

(x) *Independent Accountants.* Ernst & Young LLP, who have expressed its opinion with respect to certain financial statements of the Company and its subsidiaries and who have expressed its opinion on certain financial statements of the Target and its subsidiaries each as incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus, is an independent registered public accounting firm with respect to the Company and its subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act.

(y) *Title to Property.* The Company and its subsidiaries have good and marketable title to all real property owned by them and good title to all other properties owned by them, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except such as (i) are described in the Registration Statement, the Pricing Disclosure Package and the Prospectus or (ii) do not, singly or in the aggregate, materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries; and all of the leases and subleases material to the business of the Company and its subsidiaries,

considered as one enterprise, and under which the Company or any of its subsidiaries holds properties described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, are in full force and effect, and none of the Company or any of its subsidiaries has any notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Company or any such subsidiary under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or such subsidiary to the continued possession of the leased or subleased premises under any such lease or sublease.

(z) *Intellectual Property*. The Company and the Company's subsidiaries own or possess the right to use all material patents, inventions, trademarks, trade names, service marks, logos, trade dress, designs, data, database rights, Internet domain names, rights of privacy, rights of publicity, copyrights, works of authorship, license rights, trade secrets, know-how and proprietary information (including unpatented and unpatentable proprietary or confidential information, inventions, systems or procedures) and other industrial property and intellectual property rights, as well as related rights, such as moral rights and the right to sue for all past, present and future infringements or misappropriations of any of the foregoing, and registrations and applications for registration of any of the foregoing (collectively, "Intellectual Property") necessary to conduct their business as presently conducted and currently contemplated to be conducted in the future. To the best of the Company's knowledge, none of the Company or any of the Company's subsidiaries, whether through their respective products and services or the conduct of their respective businesses, has infringed, misappropriated, conflicted with or otherwise violated, or is currently infringing, misappropriating, conflicting with or otherwise violating, and none of the Company or the Company's subsidiaries have received any written communication or notice of infringement of, misappropriation of, conflict with or violation of, any Intellectual Property of any other person or entity. None of the Company or the Company's subsidiaries has received any material written communication or notice alleging that by conducting their business as set forth in the Registration Statement, the Pricing Disclosure Package or the Prospectus, such parties would infringe, misappropriate, conflict with, or violate, any of the Intellectual Property of any other person or entity. The Company knows of no material infringement, misappropriation or violation by others of Intellectual Property owned by or licensed to the Company or the Company's subsidiaries. The Company and the Company's subsidiaries have taken all reasonable steps necessary to secure their interests in such Intellectual Property from their employees and contractors and to protect the confidentiality of all of their confidential information and trade secrets. To the best of the Company's knowledge, none of the Intellectual Property or technology (including information technology and outsourced arrangements) employed by the Company or any of the Company's subsidiaries has been obtained or is being used by the Company or any of the Company's subsidiaries in violation of any contractual obligation binding on the Company or any of the Company's subsidiaries or any of their respective officers, directors or employees or otherwise in violation of the rights of any persons. The Company and the Company's subsidiaries own or have a valid right to access and use all computer systems, networks, hardware, software, databases, websites, and equipment used to process, store, maintain and operate data, information, and functions used in connection with the business of the Company and the Company's subsidiaries (the "IT Systems") except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The IT Systems are adequate for, and operate and perform in all material respects as required in connection with, the operation of the business of the Company and the Company's subsidiaries as currently conducted, as applicable, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and the Company's subsidiaries have implemented commercially reasonable backup, security and disaster recovery technology consistent in all material respects with applicable regulatory standards and customary industry practices.

(aa) *No Undisclosed Relationships.* There are no relationships, direct or indirect, or related party transactions involving the Company or any of its subsidiaries or any other person which is required to be disclosed in the Company's reports which have been filed by the Company with the Commission or sent to shareholders pursuant to the Exchange Act, which have not been described in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(bb) *Investment Company Act.* The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, will not be required to register as an "investment company" under the Investment Company Act of 1940, as amended (collectively, the "Investment Company Act").

(cc) *Taxes.* Except as would not reasonably be expected to result in a Material Adverse Effect, (i) all United States federal income tax returns of the Company and the Company's subsidiaries required by law to be filed have been filed and (ii) all federal income taxes, which are due and payable, have been paid, except assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided. The Company and the Company's subsidiaries have filed all other tax returns that are required to have been filed by them pursuant to applicable foreign, state, local or other law except insofar as the failure to file such returns would not reasonably be expected to result in a Material Adverse Effect, and have paid all other taxes due from the Company and the Company's subsidiaries, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been established by the Company or as would not reasonably be expected to result in a Material Adverse Effect.

(dd) *Licenses and Permits.* The Company and each of the Company's subsidiaries possess such permits, licenses, approvals, consents and other authorizations (collectively, "Governmental Licenses"), issued by the appropriate Governmental Entities necessary to conduct the business now operated by them, except where the failure so to possess would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The Company and each of the Company's subsidiaries are in compliance with the terms and conditions of all Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect. None of the Company or any of the Company's subsidiaries has received any notice of proceedings relating to the revocation or modification of any Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would reasonably be expected to result in a Material Adverse Effect.

(ee) *No Labor Disputes*. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) there is (A) no unfair labor practice complaint pending or, to the best of the Company's knowledge, threatened against the Company or any of the Company's subsidiaries before the National Labor Relations Board or similar foreign entity and no grievance or arbitration proceeding arising out of or under collective bargaining agreements pending, or to the best of the Company's knowledge, threatened, against the Company or any of the Company's subsidiaries, (B) no strike, labor dispute, slowdown or stoppage pending or, to the best of the Company's knowledge, threatened against the Company or any of the Company's subsidiaries and (C) to the best of the Company's knowledge, no new union organizing activities taking place and (ii) with respect to the employees of the Company or any of the Company's subsidiaries, there has been no violation of any foreign, federal, state or local law relating to discrimination in hiring, promotion or pay of employees or of any applicable wage or hour laws.

(ff) *Certain Environmental Matters*. Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus or as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect: (i) the Company and the Company's subsidiaries and their respective operations and facilities are in compliance with, and not subject to any known liabilities under, applicable Environmental Laws (as defined below), which compliance includes, without limitation, having obtained and being in compliance with any permits, licenses or other governmental authorizations or approvals, and having made all filings and provided all financial assurances and notices, required for the ownership and operation of the business, properties and facilities of the Company or the Company's subsidiaries under applicable Environmental Laws, and compliance with the terms and conditions thereof; (ii) none of the Company or any of the Company's subsidiaries have received any written communication, whether from a Governmental Entity, citizens group, employee or otherwise, that alleges that the Company or any of the Company's subsidiaries, as applicable, is in violation of any Environmental Law which was received within two years prior to the date hereof and remains unresolved; (iii) there is no claim, action or cause of action filed with a court or Governmental Entity, no investigation with respect to which the Company or any of the Company's subsidiaries have received material written notice, and no written notice by any person or entity alleging actual or potential liability on the part of the Company or any of the Company's subsidiaries based on or pursuant to any Environmental Law pending or, to the best of the Company's knowledge, threatened against the Company or any of the Company's subsidiaries or any person or entity whose liability under or pursuant to any Environmental Law the Company or any of the Company's subsidiaries has retained or assumed either contractually or by operation of law which was received within two years prior to the date hereof and remains unresolved; (iv) none of the Company or any of its subsidiaries is conducting or paying for, in whole or in part, any investigation, response or other corrective action pursuant to any Environmental Law at any site or facility, nor is any of them subject or a party to any order, judgment, decree, contract or agreement which imposes any obligation or liability under any Environmental Law; (v) no lien, charge, encumbrance or restriction has been recorded pursuant to any Environmental Law with respect to any assets, facility or property owned, operated or leased by the Company or any of the Company's subsidiaries; and (vi) to the best knowledge of the Company, there are no past or present actions, activities, circumstances, conditions or occurrences, including, without limitation, the Release (as defined below) or threatened Release of any Materials of Environmental Concern (as defined below), that could reasonably be

expected to result in a violation of or liability under any Environmental Law on the part of the Company or any of the Company's subsidiaries, including without limitation, any such liability which the Company or any of the Company's subsidiaries has retained or assumed either contractually or by operation of law. For purposes of this Agreement, "Environment" means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetlands, flora and fauna. "Environmental Laws" means the common law and all federal, state, local and foreign laws or regulations, ordinances, codes, orders, decrees, judgments and injunctions issued, promulgated or entered thereunder, relating to pollution or protection of the Environment or public health, including without limitation, those relating to (i) the Release or threatened Release of Materials of Environmental Concern and (ii) the manufacture, processing, distribution, use, generation, treatment, storage, transport, handling or recycling of Materials of Environmental Concern. "Materials of Environmental Concern" means any substance, material, pollutant, contaminant, chemical, waste, compound, or constituent, in any form, including without limitation, petroleum and petroleum products, subject to regulation or which can give rise to liability under any Environmental Law. "Release" means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment, or into, from or through any building, structure or facility.

(gg) *Compliance with ERISA*. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) the Company and the Company's subsidiaries and each "employee benefit plan" (as defined under the Employee Retirement Income Security Act of 1974, as amended ("ERISA," which term, as used herein, includes the regulations and published interpretations thereunder) established, maintained or contributed to by the Company, the Company's subsidiaries or their ERISA Affiliates (as defined below) but excluding any multiemployer plan (as defined in Section 4001 of ERISA) (a "Multiemployer Plan") are in compliance with ERISA; (ii) each "employee benefit plan" established, maintained or contributed to by the Company or the Company's subsidiaries or any of their ERISA Affiliates, other than a Multiemployer Plan, that is intended to be qualified under Section 401 of the Code is so qualified and, to the best knowledge of the Company, nothing has occurred, whether by action or failure to act, which would reasonably be expected to result in the loss of such qualification; and (iii) none of the Company or the Company's subsidiaries or any of their ERISA Affiliates has incurred in the six years prior to the date hereof or reasonably expects to incur any liability under (I) Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan" or Multiemployer Plan, or (II) Sections 412, 4971, 4975 or 4980B (other than liability in the ordinary course with respect to the provision of continuation coverage under Section 4980B) of the Code. "ERISA Affiliate" means, with respect to the Company or any of its subsidiaries as of the date hereof, any member of any group of organizations described in Section 414 of the Internal Revenue Code of 1986, as amended (the "Code," which term, as used herein, includes the regulations and published interpretations thereunder) of which the Company or such subsidiary is a member. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, no "reportable event" within the meaning of Section 4043(c) of ERISA for which the 30-day notice requirement has not been waived has occurred in the six years prior to the date hereof or is reasonably expected to occur with respect to any "employee benefit plan" established, maintained or contributed to by the Company, the Company's subsidiaries or any of their ERISA Affiliates as a result of the transactions contemplated by this Agreement.

(hh) *Accounting Controls*. The Company and its subsidiaries maintain effective “internal control over financial reporting” (as defined in Rule 13a-15(f) of the Exchange Act) and a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Based on the Company’s most recent evaluation of its internal controls over financial reporting pursuant to Rule 13a-15(c) of the Exchange Act, there are no material weaknesses in the Company’s internal control over financial reporting, and there has been no change in internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting since the respective dates as of which information is given in the Pricing Disclosure Package and the Prospectus. The Company’s auditors and the Audit Committee of the Board of Directors of the Company have been advised of: (i) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which have adversely affected or are reasonably likely to adversely affect the Company’s ability to record, process, summarize and report financial information; and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company’s internal controls over financial reporting. The Company has established and maintains “disclosure controls and procedures” (as defined in Rules 13a-14(c) and 15d-14(c) under the Exchange Act); the Company’s “disclosure controls and procedures” are reasonably designed to ensure that all information (both financial and non-financial) required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and regulations under the Exchange Act, and that all such information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure and to make the certifications of the Chief Executive Officer and Chief Financial Officer of the Company required under the Exchange Act with respect to such reports.

(ii) *eXtensible Business Reporting Language*. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission’s rules and guidelines applicable thereto.

(jj) *Insurance*. The Company and the Company’s subsidiaries carry or are entitled to the benefits of insurance, with financially sound and reputable insurers, in such amounts and covering such risks as is generally maintained by companies of established repute engaged in the same or similar business, and all such insurance is in full force and effect. The Company has no reason to believe that it or any of the Company’s subsidiaries will not be able (i) to renew their existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct their respective businesses as now conducted and at a cost that would not reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any of the Company’s subsidiaries has been denied any insurance coverage which it has sought or for which it has applied including, without limitation, for any asbestos-related claims or liabilities.

(kk) *Cybersecurity; Data Protection.* Except as would not reasonably be expected to result in a Material Adverse Effect, the Company and its subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, "IT Systems") are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company and its subsidiaries as currently conducted, and to the knowledge of the Company, are free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants. The Company and its subsidiaries have implemented and maintained commercially reasonable controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data (including all personal, personally identifiable, sensitive, confidential or regulated data ("Personal Data")) used in connection with their businesses, and there have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person or for any such breaches, violations, outages or unauthorized uses or accesses to the same that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, nor any incidents under internal review or investigations relating to the same. The Company and its subsidiaries are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification.

(ll) *No Unlawful Payments.* None of the Company, any of its subsidiaries or any of their respective directors, officers or employees or, to the knowledge of the Company, any agent, affiliate or other person associated with or acting on behalf of the Company or any of its subsidiaries has, in the past five years, (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made or taken an act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government official or employee, including of any government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended, or any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or committed an offence under the Bribery Act 2010 of the United Kingdom, or any other applicable anti-bribery or anti-corruption law ("Anti-Corruption Laws"); or (iv) made, offered, agreed, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit. The Company will comply with Anti-Corruption Laws and will not directly or indirectly use the proceeds of the offering of the Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, in any manner that will result in a violation of Anti-Corruption Laws. The Company and its subsidiaries have instituted, maintain and enforce, and will continue to maintain and enforce, policies and procedures designed to promote and ensure compliance with Anti-Corruption Laws.

(mm) *Compliance with Anti-Money Laundering Laws.* The operations of the Company and its subsidiaries are and for the past five years, have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering statutes of jurisdictions where the Company and its subsidiaries conduct business, the applicable rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Anti-Money Laundering Laws”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the Company’s knowledge, threatened.

(nn) *No Conflicts with Sanctions Laws.* None of the Company, any of its subsidiaries or any of their respective directors or officers, nor, to the knowledge of the Company, any employee, agent, affiliate or other person associated with or acting on behalf of the Company or any of its subsidiaries is currently the subject or the target of any sanctions administered or enforced by the U.S. government, (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”) or the U.S. Department of State and including, without limitation, the designation as a “specially designated national” or “blocked person”), the United Nations Security Council (“UNSC”) or the European Union, Her Majesty’s Treasury (“HMT”) (collectively, “Sanctions”), nor, except as authorized pursuant to an exemption under the Sanctions or under general or specific license issued by the United States or other relevant government authority, or as otherwise permitted by law, is the Company or any of its subsidiaries located, organized or resident in a country or territory that is the subject or target of comprehensive, geographic-based Sanctions (currently, Cuba, the Crimea region of Ukraine, Iran, North Korea, and Syria, each, a “Sanctioned Territory”); and, except as authorized pursuant to an exemption under the Sanctions or under general or specific license issued by the United States or other relevant government authority, or as otherwise permitted by law, the Company will not directly or indirectly use the proceeds of the offering of the Underwritten Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person that, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business in any Sanctioned Territory that, at the time of such funding, is the subject of Sanctions, or (iii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as underwriter, initial purchaser, advisor, investor or otherwise) of Sanctions. For the past 5 years, except as authorized pursuant to an exemption under the Sanctions or under general or specific license issued by the United States or other relevant government authority, or as otherwise permitted by law, (i) none of the Company, its subsidiaries or their respective directors or officers, or, to the knowledge of the Company, any employee, agent, affiliate, joint venture partner or other person associated with or acting on behalf of the Company or any of their subsidiaries has engaged in activities sanctionable under the Iran Sanctions Act, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, the Iran Threat Reduction and Syria Human Rights Act of 2012, the National Defense Authorization Act for the Fiscal Year 2012, the National Defense Authorization Act for the

Fiscal Year 2013, Executive Order Nos. 13628, 13622 and 13608, or any other U.S. economic sanctions relating to Iran (collectively, the “Iran Sanctions”), and (ii) none of the Company or its subsidiaries has knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person or Sanctioned Territory that at the time of the dealing or transaction is or was the subject or the target of Sanctions. In the past 5 years, neither the Company nor any of its subsidiaries has been the subject of any claims, complaints, charges, investigations, voluntary disclosures, enforcement actions, or other Sanctions-related proceedings, and, to the best of the Company’s knowledge, there are no pending or threatened claims or investigations of possible violations of Sanctions by the Company or any of its subsidiaries.

(oo) *No Conflicts with Export Controls.* For the past 5 years, the Company and its subsidiaries have been in compliance, in all material respects, with all laws and regulations related to the regulation of imports, exports, re-exports, transfers, releases, shipments, transmissions, or any other provision or receipt of goods, technology, technical data, software, or services, including the Export Administration Regulations (15 C.F.R. § 730-774), the Arms Export Control Act (22 U.S.C. § 2778), the International Traffic in Arms Regulations (22 C.F.R. § 120-130), Sanctions, and any other applicable law in the jurisdictions where the Company or any of its subsidiaries operates (collectively, “Export Control Laws”). The Company and each of its subsidiaries is, and has at all times in the past 5 years, been, in possession of all export licenses, authorizations, and other approvals that are required by Export Control Laws for the export, reexport, or transfer of its products, services, software or technologies from the United States or other countries, as applicable. In the past 5 years, neither the Company nor its subsidiaries has been the subject of any material claims, complaints, charges, investigations, voluntary disclosures, enforcement actions, or other related proceedings under applicable Export Control Laws, and, to the best of the Company’s knowledge, there are no pending or threatened claims or investigations of possible violations of Export Control Laws by the Company or any of its subsidiaries.

(pp) *No Dividend Restrictions.* No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary’s capital stock, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary’s property or assets to the Company or any other subsidiary of the Company.

(qq) *No Broker’s Fees.* Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against any of them or any Underwriter for a brokerage commission, finder’s fee or like payment in connection with the offering and sale of the Securities.

(rr) *No Registration Rights.* No person has the right to require the Company or any of its subsidiaries to register any securities for sale under the Securities Act by reason of the filing of the Registration Statement with the Commission or the issuance and sale of the Securities by the Company, other than those rights that have been disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus and have been waived.

(ss) *No Stabilization*. Neither the Company nor any of its subsidiaries or affiliates has taken or will take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities.

(tt) *Regulations T, U, X*. Neither the Company or any of its subsidiaries nor any agent thereof acting on their behalf has taken, and none of them will take, any action that might cause this Agreement or the issuance or sale of the Securities to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System.

(uu) [Reserved].

(vv) *Statistical and Market Data*. Any third-party statistical and market-related data included or incorporated by reference in each of the Registration Statement, the Pricing Disclosure Package or the Prospectus are based on or derived from sources that the Company believes, after reasonable inquiry, to be reliable and accurate.

(ww) *Sarbanes-Oxley Act*. Solely to the extent that the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated by the Commission and the NYSE thereunder (collectively, the “Sarbanes-Oxley Act”) have been applicable to the Company, there is and has been no failure on the part of the Company, to comply in all material respects with any provision of the Sarbanes-Oxley Act. The Company has taken all necessary actions to ensure that it is in compliance with all provisions of the Sarbanes-Oxley Act that are in effect and with which the Company is required to comply (including Section 402 related to loans) and is actively taking steps to ensure that it will be in compliance with other provisions of the Sarbanes-Oxley Act not currently in effect or which will become applicable to the Company. As of the Applicable Time, there were no outstanding personal loans made, directly or indirectly, by the Company to any director or executive officer of the Company.

(xx) *Status under the Securities Act*. At the time of filing the Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or any offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) under the Securities Act) of the Securities and at the date hereof, the Company was not and is not an “ineligible issuer,” and is a well-known seasoned issuer, in each case as defined in Rule 405 under the Securities Act. The Company has paid the registration fee for this offering pursuant to Rule 456(b)(1) under the Securities Act or will pay such fee within the time period required by such rule (without giving effect to the proviso therein) and in any event prior to the Closing Date.

4. Further Agreements of the Company. The Company covenants and agrees with each Underwriter that:

(a) *Required Filings*. The Company will file the final Prospectus with the Commission within the time periods specified by Rule 424(b) and Rule 430A, 430B or 430C under the Securities Act, will file any Issuer Free Writing Prospectus to the extent required by Rule 433 under the Securities Act; and the Company will file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the

Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of the Prospectus and for so long as the delivery of a prospectus is required in connection with the offering or sale of the Securities; and the Company will furnish copies of the Prospectus and each Issuer Free Writing Prospectus (to the extent not previously delivered) to the Underwriters in New York City prior to 10:00 A.M., New York City time, on the business day next succeeding the date of this Agreement in such quantities as the Representatives may reasonably request. The Company will pay the registration fee for this offering within the time period required by Rule 456(b)(1) under the Securities Act (without giving effect to the proviso therein) and in any event prior to the Closing Date.

(b) *Delivery of Copies.* If requested by the Representatives, the Company will deliver, without charge, (i) to the Representatives, three signed copies of the Registration Statement as originally filed and each amendment thereto, in each case including all exhibits and consents filed therewith and documents incorporated by reference therein; and (ii) to each Underwriter (A) a conformed electronic copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) and (B) during the Prospectus Delivery Period (as defined below), as many copies of the Prospectus (including all amendments and supplements thereto and documents incorporated by reference therein and each Issuer Free Writing Prospectus) as the Representatives may reasonably request. As used herein, the term “Prospectus Delivery Period” means such period of time after the first date of the public offering of the Securities as in the opinion of counsel for the Underwriters a prospectus relating to the Securities is required by law to be delivered (or required to be delivered but for Rule 172 under the Securities Act) in connection with sales of the Securities by any Underwriter or dealer.

(c) *Amendments or Supplements, Issuer Free Writing Prospectuses.* Before making, preparing, using, authorizing, approving, referring to or filing any Issuer Free Writing Prospectus, and before filing any amendment or supplement to the Registration Statement, the Pricing Disclosure Package or the Prospectus, the Company will furnish to the Representatives and counsel for the Underwriters a copy of the proposed Issuer Free Writing Prospectus, amendment or supplement for review and will not make, prepare, use, authorize, approve, refer to or file any such Issuer Free Writing Prospectus or file any such proposed amendment or supplement to which the Representatives reasonably objects.

(d) *Notice to the Representatives.* The Company will advise the Representatives promptly, and confirm such advice in writing, (i) when any amendment to the Registration Statement has been filed or becomes effective; (ii) when any supplement to the Pricing Disclosure Package, the Prospectus, or any Issuer Free Writing Prospectus or any amendment to the Prospectus has been filed or distributed; (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or the receipt of any comments from the Commission relating to the Registration Statement or any other request by the Commission for any additional information; (iv) of the issuance by the Commission of any order suspending the effectiveness of the Registration Statement or preventing or suspending the use of any Preliminary Prospectus, any of the Pricing Disclosure Package, or the Prospectus or the initiation or threatening of any proceeding for that purpose or pursuant to Section 8A of the Securities Act; (v) of the occurrence of any event within the Prospectus Delivery Period as a result of which the Prospectus, any of the Pricing Disclosure Package, or any Issuer Free Writing Prospectus as then amended or

supplemented would include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus, the Pricing Disclosure Package, or any such Issuer Free Writing Prospectus is delivered to a purchaser, not misleading; (vi) of the receipt by the Company of any notice of objection of the Commission to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act; and (vii) of the receipt by the Company of any notice with respect to any suspension of the qualification of the Securities for offer and sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and the Company will use its commercially reasonable efforts to prevent the issuance of any such order suspending the effectiveness of the Registration Statement, preventing or suspending the use of any Preliminary Prospectus, any of the Pricing Disclosure Package or the Prospectus or suspending any such qualification of the Securities and, if any such order is issued, will obtain as soon as possible the withdrawal thereof.

(e) *Ongoing Compliance.* (1) If during the Prospectus Delivery Period (i) any event or development shall occur or condition shall exist as a result of which the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, not misleading or (ii) it is necessary to amend or supplement the Prospectus to comply with law, the Company will immediately notify the Underwriters thereof and forthwith prepare and, subject to paragraph (c) above, file with the Commission and furnish to the Underwriters and to such dealers as the Representatives may designate such amendments or supplements to the Prospectus (or any document to be filed with the Commission and incorporated by reference therein) as may be necessary so that the statements in the Prospectus as so amended or supplemented (or any document to be filed with the Commission and incorporated by reference therein) will not, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus will comply with law and (2) if at any time prior to the Closing Date (i) any event or development shall occur or condition shall exist as a result of which the Pricing Disclosure Package as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Pricing Disclosure Package is delivered to a purchaser, not misleading or (ii) it is necessary to amend or supplement the Pricing Disclosure Package to comply with law, the Company will immediately notify the Underwriters thereof and forthwith prepare and, subject to paragraph (c) above, file with the Commission (to the extent required) and furnish to the Underwriters and to such dealers as the Representatives may designate, such amendments or supplements to the Pricing Disclosure Package (or any document to be filed with the Commission and incorporated by reference therein) as may be necessary so that the statements in the Pricing Disclosure Package as so amended or supplemented will not, in the light of the circumstances existing when the Pricing Disclosure Package is delivered to a purchaser, be misleading or so that the Pricing Disclosure Package will comply with law.

(f) *Blue Sky Compliance.* The Company will qualify the Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Representatives shall reasonably request and will continue such qualifications in effect so long as required for distribution of the Securities; provided that the Company shall not be required to (i) 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, (ii) file any general consent to service of process in any such jurisdiction or (iii) subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(g) *Earning Statement.* The Company will make generally available to its security holders and the Representatives as soon as practicable an earning statement that satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 of the Commission promulgated thereunder covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the “effective date” (as defined in Rule 158) of the Registration Statement.

(h) *Clear Market.* For a period of 90 days after the date of the Prospectus (the “Restricted Period”), the Company will not (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, or submit to, or file with, the Commission a registration statement under the Securities Act relating to, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, or publicly disclose the intention to make any offer, sale, pledge, disposition, submission or filing, or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock or any such other securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, without the prior written consent of J.P. Morgan Securities LLC, other than (A) the Securities to be sold hereunder, (B) any shares of Issuable Common Stock and any shares of Common Stock of the Company issued upon the exercise of any option or warrant, or the vesting of restricted stock units or the conversion or exchange of a security outstanding on the date hereof as referred to in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (C) pursuant to the stock-based compensation plans of the Company and its subsidiaries as referred to in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (D) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act (a “Plan”) during the Restricted Period provided that such Plan does not provide for the transfer of shares of Common Stock during the Restricted Period and the establishment of such Plan does not require or otherwise result in any public filing or other public announcement of such plan during the Restricted Period, (E) shares of Common Stock to be issued to one or more counterparties in connection with a bona fide commercial relationship (including joint ventures, marketing or distribution arrangements, collaboration agreements or intellectual property license agreements) or any acquisition of assets of not less than a majority or controlling portion of the equity of another entity; provided, that (x) the aggregate number of shares of Common Stock issued under this subsection (E) shall not exceed 5% of the number of shares of Common Stock of the Company outstanding as of the date hereof; and (y) prior to such issuance, each recipient of such shares under this subsection (E) shall execute and deliver to the Representatives a “lock-up” agreement substantially in the form of Exhibit A hereto, and (F) the filing of any registration statement on Form S-8 or a successor form thereto relating to the shares of Common Stock granted pursuant to or reserved for issuance under the stock-based compensation plans of the Company and its subsidiaries referred to in clause (C).

(i) *Use of Proceeds*. The Company will apply the net proceeds from the sale of the Securities as described in each of the Registration Statement, the Pricing Disclosure Package and the Prospectus under the heading “Use of proceeds”.

(j) *No Stabilization*. Neither the Company nor its subsidiaries will take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities.

(k) *Issuable Common Stock*. The Company will reserve and keep available at all times, free of preemptive rights, the maximum number of shares of Issuable Common Stock issuable under the Purchase Contract Agreement (calculated assuming settlement of the Purchase Contracts at the “maximum settlement rate,” as such term is defined in the Pricing Disclosure Package).

(l) *Exchange Listing*. The Company will use its reasonable best efforts to cause the listing of the Securities on the NYSE within 30 days of the Closing Date. The Company will use its commercially reasonable efforts to list, subject to notice of issuance, the Issuable Common Stock and the Securities on the NYSE.

(m) *Reports*. So long as the Securities are outstanding, the Company will make available to the Representatives, as soon as they are available, copies of all reports or other communications (financial or other) furnished to holders of the Securities, and copies of any reports and financial statements furnished to or filed with the Commission or any national securities exchange or automatic quotation system; *provided* the Company will be deemed to have furnished such reports and financial statements to the Representatives to the extent they are filed on the Commission’s Electronic Data Gathering, Analysis, and Retrieval system.

(n) *Record Retention*. The Company will, pursuant to reasonable procedures developed in good faith, retain copies of each Issuer Free Writing Prospectus that is not filed with the Commission in accordance with Rule 433 under the Securities Act.

(o) *Adjustments to Purchase Contracts*. The Company will not, between the date hereof and the Closing Date, do or authorize any act or thing that would result in an adjustment of the settlement rates of the Purchase Contracts.

5. Certain Agreements of the Underwriters. Each Underwriter hereby severally represents and agrees that:

(a) It has not used, authorized use of, referred to or participated in the planning for use of, and will not use, authorize use of, refer to or participate in the planning for use of, any “free writing prospectus”, as defined in Rule 405 under the Securities Act (which term includes use of any written information furnished to the Commission by the Company and not incorporated by reference into the Registration Statement and any press release issued by the Company) other than (i) a free writing prospectus that contains no “issuer information” (as defined in Rule 433(h)(2) under the Securities Act) that was not included (including through incorporation by reference) in the Preliminary Prospectus or a previously filed Issuer Free Writing Prospectus, (ii) any Issuer Free Writing Prospectus listed on Annex A or prepared pursuant to Section 3(c) or Section 4(c) above (including any electronic road show), or (iii) any free writing prospectus prepared by such underwriter and approved by the Company in advance in writing (each such free writing prospectus referred to in clauses (i) or (iii), an “Underwriter Free Writing Prospectus”).

(b) It has not and will not, without the prior written consent of the Company, use any free writing prospectus that contains the final terms of the Securities unless such terms have previously been included in a free writing prospectus filed with the Commission; provided that Underwriters may use a term sheet substantially in the form of Annex B hereto without the consent of the Company; provided further that any Underwriter using such term sheet shall notify the Company, and provide a copy of such term sheet to the Company, prior to, or substantially concurrently with, the first use of such term sheet.

(c) It is not subject to any pending proceeding under Section 8A of the Securities Act with respect to the offering (and will promptly notify the Company if any such proceeding against it is initiated during the Prospectus Delivery Period).

6. Conditions of Underwriters' Obligations. The obligation of each Underwriter to purchase the Underwritten Securities on the Closing Date or the Option Securities on the Additional Closing Date, as the case may be, as provided herein is subject to the performance by the Company of its covenants and other obligations hereunder and to the following additional conditions:

(a) *Registration Compliance; No Stop Order.* No order suspending the effectiveness of the Registration Statement shall be in effect, and no proceeding for such purpose, pursuant to Rule 401(g)(2) or pursuant to Section 8A under the Securities Act shall be pending before or threatened by the Commission; the Prospectus and each Issuer Free Writing Prospectus shall have been timely filed with the Commission under the Securities Act (in the case of an Issuer Free Writing Prospectus, to the extent required by Rule 433 under the Securities Act) and in accordance with Section 4(a) hereof; and all requests by the Commission for additional information shall have been complied with to the reasonable satisfaction of the Representatives.

(b) *Representations and Warranties.* The respective representations and warranties of the Company contained herein shall be true and correct on the date hereof and on and as of the Closing Date or the Additional Closing Date, as the case may be; and the statements of the Company and its officers made in any certificates delivered pursuant to this Agreement shall be true and correct on and as of the Closing Date or the Additional Closing Date, as the case may be.

(c) *No Material Adverse Change.* Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the condition, financial or otherwise, or in earnings, business affairs or business prospects (x) of the Company and the Company's subsidiaries taken as a whole, or (y) of the Target and the Target's subsidiaries taken as a whole, in each case, whether or not occurring in the ordinary course of business, which, in the judgment of the Representatives, is material and adverse and makes it impractical or inadvisable to proceed with the offering, sale or delivery of the Securities; (ii) any downgrading in the rating of any debt

securities of the Company by any “nationally recognized statistical rating organization” (as defined under Section 3(a)(62) of the Exchange Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating) or any announcement that the Company has been placed on negative outlook; (iii) any change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls the effect of which is such as to make it, in the judgment of the Representatives, impractical to proceed with the offering, sale or delivery of or to enforce contracts for the sale of the Securities, whether in the primary market or in respect of dealings in the secondary market, (iv) any suspension or material limitation of trading in securities generally on the New York Stock Exchange or any setting of minimum or maximum prices for trading on any such exchanges; (v) any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market; (vi) any banking moratorium declared by any U.S. federal or New York authorities; (vii) any major disruption of settlements of securities, payment, or clearance services in the United States or any other country where such securities are listed or (viii) any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States or any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of the Representatives, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency is such as to make it in the judgment of the Representatives impractical or inadvisable to proceed with the offering, sale or delivery of the Securities or to enforce contracts for the sale of the Securities.

(d) *Officer's Certificate.* The Representatives shall have received certificates, dated the Closing Date or the Additional Closing Date, as the case may be, of an executive officer of the Company and a principal financial or accounting officer of the Company in which such officers shall state (i) that the representations and warranties of the Company in this Agreement are true and correct, (ii) that the Company has complied with all agreements and satisfied all conditions on their part to be performed or satisfied hereunder at or prior to the Closing Date or the Additional Closing Date, as the case may be, and (iii) that, subsequent to the dates of the most recent financial statements in the Pricing Disclosure Package there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and the Company's subsidiaries taken as a whole, whether or not occurring in the ordinary course of business.

(e) *Comfort Letters.* (i) On the date of this Agreement and on the Closing Date or the Additional Closing Date, as the case may be, Ernst & Young LLP, the independent auditors for the Company, shall have furnished to the Representatives letters, dated the respective dates of delivery thereof and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in each of the Registration Statement, the Pricing Disclosure Package and the Prospectus; provided, that the letter delivered on the Closing Date or the Additional Closing Date, as the case may be, shall use a "cut-off" date no more than two business days prior to such Closing Date or such Additional Closing Date, as the case may be.

(ii) On the date of this Agreement and on the Closing Date or the Additional Closing Date, as the case may be, Ernst & Young LLP, the independent auditors for the Target, shall have furnished to the Representatives letters, dated the respective dates of delivery thereof and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in each of the Registration Statement, the Pricing Disclosure Package and the Prospectus; provided, that the letter delivered on the Closing Date or the Additional Closing Date, as the case may be, shall use a "cut-off" date no more than two business days prior to such Closing Date or such Additional Closing Date, as the case may be.

(iii) On the date of this Agreement and on the Closing Date or the Additional Closing Date, as the case may be, the Company shall have furnished to the Representatives a certificate, dated the respective dates of delivery thereof and addressed to the Underwriters, of its chief financial officer with respect to certain financial data contained in the Pricing Disclosure Package and the Prospectus, in form and substance reasonably satisfactory to the Representatives.

(f) *Opinion and 10b-5 Statement of Counsel for the Company.* Gibson, Dunn & Crutcher LLP, counsel for the Company, shall have furnished to the Representatives, at the request of the Company, their written opinion and 10b-5 statement, dated the Closing Date or the Additional Closing Date, as the case may be, and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives.

(g) *Opinion of Special Counsel for the Company.* Allen & Overy LLP, special counsel for the Company, shall have furnished to the Representatives, at the request of the Company, their written opinion, dated the Closing Date or the Additional Closing Date, as the case may be, and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives.

(h) *Opinion and 10b-5 Statement of Counsel for the Underwriters.* The Representatives shall have received on and as of the Closing Date or the Additional Closing Date, as the case may be, an opinion and 10b-5 statement, addressed to the Underwriters, of Latham & Watkins LLP, counsel for the Underwriters, with respect to such matters as the Representatives may reasonably request, and such counsel shall have received such documents and information as they may reasonably request to enable them to pass upon such matters.

(i) *No Legal Impediment to Issuance and/or Sale.* No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority that would, as of the Closing Date or the Additional Closing Date, as the case may be, prevent the issuance or sale of the Securities by the Company; and no injunction or order of any federal, state or foreign court shall have been issued that would, as of the Closing Date or the Additional Closing Date, as the case may be, prevent the issuance or sale of the Securities by the Company.

(j) *Good Standing.* The Representatives shall have received on and as of the Closing Date or the Additional Closing Date, as the case may be, satisfactory evidence of the good standing of the Company and its Significant Subsidiaries (as such term is defined in Rule 1-02 of Regulation S-X) in their respective jurisdictions of organization and their good standing in such other jurisdictions as the Representatives may reasonably request, in each case in writing or any standard form of telecommunication from the appropriate governmental authorities of such jurisdictions.

(k) *Exchange Listing.* An application for the listing of the Securities and the Issuable Common Stock shall have been submitted to the NYSE, and satisfactory evidence of such actions shall have been provided to the Representatives.

(l) *Lock-up Agreements.* The “lock-up” agreements, each substantially in the form of Exhibit A hereto, between you and certain officers and directors of the Company relating to sales and certain other dispositions of shares of Stock or certain other securities, delivered to you on or before the date hereof, shall be in full force and effect on the Closing Date or the Additional Closing Date, as the case may be.

(m) *Purchase Contract Agreement.* The Company, the Purchase Contract Agent and the Trustee shall have executed and delivered the Purchase Contract Agreement and the Underwriters shall have received copies, conformed as executed, thereof.

(n) *Base Indenture and Supplemental Indenture.* The Company and the Trustee shall have executed and delivered each of the Base Indenture and the Supplemental Indenture and the Underwriters shall have received copies, conformed as executed, thereof.

(o) *Additional Documents.* On or prior to the Closing Date or the Additional Closing Date, as the case may be, the Company shall have furnished to the Representatives such further certificates and documents as the Representatives may reasonably request.

All opinions, letters, certificates and evidence mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriters.

7. Indemnification and Contribution.

(a) *Indemnification of the Underwriters.* The Company agrees to indemnify and hold harmless each Underwriter, its affiliates, directors and officers and each person, if any, who controls such Underwriter 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 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, (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or caused by 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 (ii) any untrue statement or alleged untrue statement of a material fact contained in the Prospectus (or any amendment or supplement thereto), any Preliminary Prospectus, any Issuer Free Writing Prospectus, any “issuer

information” filed or required to be filed pursuant to Rule 433(d) under the Securities Act, any road show as defined in Rule 433(h) under the Securities Act (a “road show”) or any Pricing Disclosure Package (including any Pricing Disclosure Package that has subsequently been amended), or caused by any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in 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 Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in subsection (b) below.

(b) *Indemnification of the Company.* Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, its directors, its officers who signed the Registration Statement and each person, if any, who controls the Company 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 Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in the Registration Statement, the Prospectus (or any amendment or supplement thereto), any Preliminary Prospectus, any Issuer Free Writing Prospectus, any road show or any Pricing Disclosure Package (including any Pricing Disclosure Package that has subsequently been amended), it being understood and agreed upon that the only such information furnished by any Underwriter consists of the following information in the Prospectus furnished on behalf of each Underwriter: under the caption “Underwriting”, the first and second sentence of the third paragraph; the seventh paragraph; the twelfth paragraph; and the fourth paragraph under the subheading “Other Relationships”.

(c) *Notice and Procedures.* 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 the preceding paragraphs of this Section 7, 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 the preceding paragraphs of this Section 7 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 the preceding paragraphs of this Section 7. 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 (who shall not, without the consent of the Indemnified Person, be counsel to the Indemnifying Person) to represent the Indemnified Person and any others entitled to indemnification pursuant to this Section that the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses 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 paid or reimbursed as they are incurred. Any such separate firm for any Underwriter, its affiliates, directors and officers and any control persons of such Underwriter shall be designated in writing by J.P. Morgan Securities LLC and any such separate firm for the Company, its directors, its officers who signed the Registration Statement and any control persons of the Company 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, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason 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 (x) 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 (y) 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.

(d) *Contribution.* If the indemnification provided for in paragraphs (a), (b) or (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, on the one hand, and the Underwriters on the other, from the offering of the Securities 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 Underwriters 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 benefits received by the Company, on the one hand, and the Underwriters on the other, shall be deemed to be in the same respective proportions as the net proceeds (before deducting expenses) received by the Company from the sale of the Securities and the total underwriting discounts and commissions received by the Underwriters in connection therewith, in each case as set forth in the table on the cover of the Prospectus, bear to the aggregate offering price of the Securities. The relative fault of the

Company, on the one hand, and the Underwriters 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 Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) *Limitation on Liability.* The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to paragraph (d) above were determined by pro rata allocation (even if the Underwriters 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 (d) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph (d) 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 paragraphs (d) and (e), in no event shall an Underwriter be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by such Underwriter with respect to the offering of the Securities exceeds the amount of any damages that such Underwriter 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 Underwriters' obligations to contribute pursuant to paragraphs (d) and (e) are several in proportion to their respective purchase obligations hereunder and not joint.

(f) *Non-Exclusive Remedies.* The remedies provided for in this Section 7 paragraphs (a) through (e) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity.

8. Effectiveness of Agreement. This Agreement shall become effective as of the date first written above.

9. Termination. This Agreement may be terminated in the absolute discretion of the Representatives, by notice to the Company, if after the execution and delivery of this Agreement and on or prior to the Closing Date or, in the case of the Option Securities, prior to the Additional Closing Date (i) trading generally shall have been suspended or materially limited on or by any of the New York Stock Exchange or The Nasdaq Stock Market; (ii) trading of any securities issued or guaranteed by the Company shall have been suspended on any exchange or in any over-the-counter market; (iii) a general moratorium on commercial banking activities shall have been declared by federal or New York State authorities; or (iv) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis, either within or outside the United States, that, in the judgment of the Representatives, is material and adverse and makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities on the Closing Date or the Additional Closing Date, as the case may be, on the terms and in the manner contemplated by this Agreement, the Registration Statement, the Pricing Disclosure Package and the Prospectus.

10. Defaulting Underwriter.

(a) If, on the Closing Date or the Additional Closing Date, as the case may be, any Underwriter defaults on its obligation to purchase the Securities that it has agreed to purchase hereunder on such date, the non-defaulting Underwriters may in their discretion arrange for the purchase of such Securities by other persons satisfactory to the Company on the terms contained in this Agreement. If, within 24 hours after any such default by any Underwriter, the non-defaulting Underwriters do not arrange for the purchase of such Securities, then the Company shall be entitled to a further period of 24 hours within which to procure other persons satisfactory to the non-defaulting Underwriters to purchase such Securities on such terms. If other persons become obligated or agree to purchase the Securities of a defaulting Underwriter, either the non-defaulting Underwriters or the Company may postpone the Closing Date or the Additional Closing Date, as the case may be, for up to five full business days in order to effect any changes that in the opinion of counsel for the Company or counsel for the Underwriters may be necessary in the Registration Statement and the Prospectus or in any other document or arrangement, and the Company agrees to promptly prepare any amendment or supplement to the Registration Statement and the Prospectus that effects any such changes. As used in this Agreement, the term “Underwriter” includes, for all purposes of this Agreement unless the context otherwise requires, any person not listed in Schedule 1 hereto that, pursuant to this Section 10, purchases Securities that a defaulting Underwriter agreed but failed to purchase.

(b) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters, the Company as provided in paragraph (a) above, the aggregate number of Securities that remain unpurchased on the Closing Date or the Additional Closing Date, as the case may be, does not exceed one-eleventh of the aggregate number of Securities to be purchased on such date, then the Company shall have the right to require each non-defaulting Underwriter to purchase the number of Securities that such Underwriter agreed to purchase hereunder on such date plus such Underwriter’s pro rata share (based on the number of Securities that such Underwriter agreed to purchase on such date) of the Securities of such defaulting Underwriter or Underwriters for which such arrangements have not been made.

(c) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters, the Company as provided in paragraph (a) above, the aggregate number of Securities that remain unpurchased on the Closing Date or the Additional Closing Date, as the case may be, exceeds one-eleventh of the aggregate amount of Securities to be purchased on such date, or if the Company shall not exercise the right described in paragraph (b) above, then this Agreement or, with respect to any Additional Closing Date, the obligation of the Underwriters to purchase Securities on the Additional Closing Date, as the case may be, shall terminate without liability on the part of the non-defaulting Underwriters. Any termination of this Agreement pursuant to this Section 10 shall be without liability on the part of the Company, except that the Company will continue to be liable for the payment of expenses as set forth in Section 11 hereof and except that the provisions of Section 7 hereof shall not terminate and shall remain in effect.

(d) Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Company or any non-defaulting Underwriter for damages caused by its default.

11. Payment of Expenses.

(a) Whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, the Company will pay or cause to be paid all costs and expenses incident to the performance of its obligations hereunder, including without limitation, (i) the costs incident to the authorization, issuance, sale, preparation and delivery of the Securities and any taxes payable in that connection; (ii) the costs incident to the preparation, printing and filing under the Securities Act of the Registration Statement, the Preliminary Prospectus, any Issuer Free Writing Prospectus, any Pricing Disclosure Package and the Prospectus (including all exhibits, amendments and supplements thereto) and the distribution thereof; (iii) the costs of reproducing and distributing each of the Transaction Documents; (iv) the fees and expenses of the Company's counsel and independent accountants; (v) the fees and expenses incurred in connection with the registration or qualification and determination of eligibility for investment of the Securities under the laws of such jurisdictions as the Representatives may reasonably designate and the preparation, printing and distribution of a Blue Sky Memorandum (including the reasonable related fees and expenses of counsel for the Underwriters); (vi) the cost of preparing stock certificates; (vii) the costs and charges of any transfer agent, registrar or depository; (viii) all expenses and application fees incurred in connection with any filing with, and clearance of the offering by, FINRA (including related legal fees up to an aggregate of \$15,000 when combined with such fees and expenses incurred in connection with clause (v)); (ix) all costs and expenses incident to listing the Securities and the Issuable Common Stock on the NYSE; (x) all expenses incurred by the Company in connection with any "road show" presentation to potential investors; and (xi) all expenses and application fees related to the listing of the Issuable Common Stock on the NYSE.

(b) If (i) this Agreement is terminated pursuant to Section 9, (ii) the Company for any reason fails to tender the Securities for delivery to the Underwriters or (iii) the Underwriters decline to purchase the Securities for any reason permitted under this Agreement, the Company agrees to reimburse the Underwriters for all out-of-pocket costs and expenses (including the reasonable fees and expenses of their counsel) reasonably incurred by the Underwriters in connection with this Agreement and the offering contemplated hereby.

12. Persons Entitled to Benefit of Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and any controlling persons referred to herein and the affiliates of each Underwriter referred to in Section 7 hereof. Nothing in this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein. No purchaser of Securities from any Underwriter shall be deemed to be a successor merely by reason of such purchase.

13. Survival. The respective indemnities, rights of contribution, representations, warranties and agreements of the Company and the Underwriters contained in this Agreement or made by or on behalf of the Company or the Underwriters pursuant to this Agreement or any certificate delivered pursuant hereto shall survive the delivery of and payment for the Securities and shall remain in full force and effect, regardless of any termination of this Agreement or any investigation made by or on behalf of the Company or the Underwriters or the directors, officers, controlling persons or affiliates referred to in Section 7 hereof.

14. Certain Defined Terms. For purposes of this Agreement, (a) except where otherwise expressly provided, the term “affiliate” has the meaning set forth in Rule 405 under the Securities Act; (b) the term “business day” means any day other than a day on which banks are permitted or required to be closed in New York City; and (c) the term “subsidiary” has the meaning set forth in Rule 405 under the Securities Act.

15. Compliance with USA Patriot Act. In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the Underwriters to properly identify their respective clients.

16. Miscellaneous.

(a) *Notices*. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted and confirmed by any standard form of telecommunication. Notices to the Underwriters shall be given to the Representatives c/o J.P. Morgan Securities LLC, 383 Madison Avenue, New York, New York 10179 (fax: (212) 622-8358); Attention: Equity Syndicate Desk and c/o Credit Suisse Securities (USA) LLC, Eleven Madison Avenue, New York, New York 10010; Attention: LCD-IBD. Notices to the Company shall be given to it at Colfax Corporation, 420 National Business Parkway, 5th Floor, Annapolis Junction, Maryland 20701, fax: (301) 323-9001, Attention: A. Lynne Puckett.

(b) *Governing Law*. This Agreement and any claim, controversy or dispute arising under or related to this Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(c) *Submission to Jurisdiction*. The Company hereby submits to the exclusive jurisdiction of the U.S. federal and New York state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. The Company waives any objection which it may now or hereafter have to the laying of venue of any such suit or proceeding in such courts arising out of or relating to this Agreement or the transactions contemplated hereby. The Company agrees that final judgment in any such suit, action or proceeding brought in such court shall be conclusive and binding upon the Company, and may be enforced in any court to the jurisdiction of which Company is subject by a suit upon such judgment.

(d) *Waiver of Jury Trial*. Each of the parties hereto hereby waives any right to trial by jury in any suit or proceeding arising out of or relating to this Agreement.

(e) *Counterparts.* This Agreement may be signed in counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument.

(f) *Amendments or Waivers.* No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

(g) *Headings.* The headings herein are included for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

(h) *Recognition of the U.S. Special Resolution Regimes.*

(i) In the event that any Underwriter that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Underwriter of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(ii) In the event that any Underwriter that is a Covered Entity or a BHC Act Affiliate of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Underwriter are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(iii) For the purposes of this clause 16(h),

“**BHC Act Affiliate**” has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“**Covered Entity**” means any of the following:

(i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“U.S. Special Resolution Regime” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

If the foregoing is in accordance with your understanding, please indicate your acceptance of this Agreement by signing in the space provided below.

COLFAX CORPORATION

By: /s/ Christopher Hix

Name: Christopher M. Hix

Title: Senior Vice President, Finance, Chief
Financial Officer and Treasurer

Accepted: As of the date first written above

J.P. MORGAN SECURITIES LLC

By: /s/ Kevin Cheng

Authorized Signatory

CREDIT SUISSE SECURITIES (USA) LLC

By: /s/ William Young

Authorized Signatory

For themselves and on behalf of the
several Underwriters listed
in Schedule 1 hereto.

SCHEDULE 1

<u>Underwriter</u>	<u>Number of Underwritten Securities</u>
J.P. Morgan Securities LLC	1,820,000
Credit Suisse Securities (USA) LLC	980,000
BNP Paribas Securities Corp.	128,000
Barclays Capital Inc.	120,000
Citigroup Global Markets Inc.	120,000
Citizens Capital Markets, Inc.	120,000
Goldman Sachs & Co. LLC	120,000
HSBC Securities (USA) Inc.	120,000
BMO Capital Markets Corp.	80,000
MUFG Securities Americas Inc.	80,000
RBC Capital Markets, LLC	80,000
Scotia Capital (USA) Inc.	80,000
TD Securities (USA) LLC	80,000
SMBC Nikko Securities America, Inc.	72,000
Total	4,000,000

Sch. 1-1

ANNEX A

Annex A-1: LIST OF ISSUER FREE WRITING PROSPECTUSES THAT ARE PART OF THE PRICING DISCLOSURE PACKAGE

- a. Pricing Term Sheet, to be filed January 9, 2019 pursuant to Rule 433 under the Securities Act, substantially in the form of Annex B.

Annex A-2: LIST OF ISSUER FREE WRITING PROSPECTUSES THAT ARE NOT PART OF THE PRICING DISCLOSURE PACKAGE

- a. Issuer Free Writing Prospectus dated January 7, 2019 filed with the Securities and Exchange Commission on January 7, 2018 (launch press release).
- b. Issuer Free Writing Prospectus dated January 8, 2019 filed with the Securities and Exchange Commission on January 8, 2018.
- c. Issuer Free Writing Prospectus, dated January 8, 2019, to be filed January 9, 2019 pursuant to Rule 433 under the Securities Act, attached hereto as Annex C.

Annex A-1

Annex B

Pricing Term Sheet

Annex B-1

Annex C

Pricing Press Release

FORM OF LOCK-UP AGREEMENT

_____, 20____

J.P. MORGAN SECURITIES LLC
CREDIT SUISSE SECURITIES (USA) LLC

as Representatives of
the several Underwriters listed in
Schedule 1 to the Underwriting
Agreement referred to below

c/o J.P. Morgan Securities LLC
383 Madison Avenue
New York, NY 10179

c/o Credit Suisse Securities (USA) LLC
Eleven Madison Avenue
New York, New York 10010

Re: Colfax Corporation — Public Offering of Tangible Equity Units

Ladies and Gentlemen:

The undersigned understands that you, as Representatives of the several Underwriters, propose to enter into an underwriting agreement (the "Underwriting Agreement") with Colfax Corporation, a Delaware corporation (the "Company"), providing for the public offering (the "Public Offering") by the several Underwriters named in Schedule 1 to the Underwriting Agreement (the "Underwriters"), of tangible equity units of the Company (the "Securities"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Underwriting Agreement.

In consideration of the Underwriters' agreement to purchase and make the Public Offering of the Securities, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned hereby agrees that, without the prior written consent of J.P. Morgan Securities LLC, on behalf of the Underwriters, the undersigned will not, during the period beginning on the date of this letter agreement (this "Letter Agreement") and ending 90 days after the date of the final prospectus supplement relating to the Public Offering (the "Prospectus") (such period, the "Restricted Period"), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any of shares of common stock of the Company, par value \$0.001 per share (the "Common Stock") or any securities convertible into or exercisable or exchangeable for Common Stock (including without limitation, the Securities, Common Stock or such other securities which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and securities which may be issued upon exercise of a

stock option or warrant), or publicly disclose the intention to make any offer, sale, pledge or disposition, (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock or such other securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise or (3) make any demand for or exercise any right with respect to the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock, in each case other than:

- (a) transfer of shares of Common Stock as *bona fide* gifts,
- (b) dispositions to any trust for the direct or indirect benefit of the undersigned and/or the immediate family of the undersigned,
- (c) dispositions of shares of Common Stock to any corporation, partnership, limited liability company or other entity all of the beneficial ownership interests of which are held by the undersigned and/or the immediate family of the undersigned,
- (d) dispositions by will, other testamentary document or intestate succession to the legal representative, heir, beneficiary or a member of the immediate family of the undersigned,
- (e) distributions of shares of Common Stock to partners, members or stockholders of the undersigned or to the undersigned's affiliates or to any investment fund or other entity controlled or managed by the undersigned,
- (f) in the case of the exercise of an option granted pursuant to the Company's stock incentive plan described in the registration statement filed with the Commission, transfers to the Company in connection with (1) the "net" or "cashless" exercise of such options in accordance with their terms, (2) the surrender to the Company of Common Stock in lieu of payment in cash of the exercise price thereof or (3) the satisfaction of the payment to the Company of the exercise price thereof, provided that that following any such transfers, the foregoing restrictions shall apply to any securities issued to and retained by the undersigned upon such exercise and provided, further that, if required, any public report or filing under Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act") shall clearly indicate in the footnotes thereto that the filing relates to the exercise of a stock option, that no shares of Common Stock were sold by the reporting person and that Common Stock received upon exercise of the stock option are subject to this Lock Up Agreement with the underwriters of the Public Offering,
- (g) the entry into any trading plan established pursuant to Rule 10b5-1 under the Exchange Act, provided that such plan does not provide for any sales or other dispositions of Common Stock during the Lock-Up Period and no public announcement or public disclosure of entry into such plan is made or required to be made,
- (h) the repurchase of Common Stock by the Company in connection with termination of the undersigned's employment with the Company,
- (i) transactions relating to Common Stock acquired by the undersigned in the Public Offering or in open market transactions after the completion of the Public Offering, provided that no public disclosure or filing under Section 16(a) of the Exchange Act will be required or will be voluntarily made during the Restricted Period in connection with such transactions;

- (j) pursuant to a *bona fide* third-party tender offer, merger, consolidation or other similar transaction involving a Change in Control (as defined below) of the Company, provided that in the event that such tender offer, merger, consolidation or other such transaction is not completed, the Common Stock subject to this Lock-Up Agreement shall remain subject to this Lock-up Agreement (for purposes of this lock-up agreement, "Change of Control" shall mean the transfer (whether by tender offer, merger, consolidation or other similar transaction), in one transaction or a series of related transactions, to a person or group of affiliated persons (other than an underwriter pursuant to the Public Offering), of the Company's voting securities if, after such transfer, such person or group of affiliated persons would hold more than 50% of outstanding voting securities of the Company (or surviving entity); or
- (k) in the case of exercise or vesting of an option, restricted stock unit or similar security granted pursuant to a Company compensation plan described in the registration statement filed with the Commission, sales to meet tax obligations related to such exercise or vesting (or related delivery) of such securities pursuant to a trading plan established pursuant to Rule 10b5-1 under the Exchange Act or otherwise, provided, that, such sales (x) are consistent with past practice and (y) relate to no more than 5,000 shares of Common Stock by the undersigned, and provided, further, that if required, any public report or filing under Section 16 of the Exchange Act shall clearly indicate in the footnotes thereto that the filing relates to the exercise or vesting of an option, restricted stock unit or similar security and a related sale to meet tax obligations.

provided, however, that in the case of any transfer or disposition pursuant to any of the foregoing clauses (a) through (e), (x) each transferee, distributee or recipient of the Common Stock transferred, distributed or disposed of agrees to be bound by the same restrictions in place for the undersigned pursuant to this Lock-Up Agreement for the duration that such restrictions remain in effect at the time of such transfer, distribution or disposition and executes and delivers to the Underwriter a lock-up agreement in the form of this Lock-Up Agreement and (y) no filing by any party (donor, donee, transferor or transferee) under the Exchange Act, or other public announcement shall made voluntarily during the Restricted Period in connection with such transfer or distribution (other than a filing on Form 5 required by applicable law or regulation, provided that with respect to this clause (y), any required filing under the Exchange Act shall include a footnote disclosure explaining the nature of, and reason for, such disposition).

In furtherance of the foregoing, the Company, and any duly appointed transfer agent for the registration or transfer of the securities described herein, are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Letter Agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Letter Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that, if the Underwriting Agreement does not become effective by March 31, 2019, or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Common Stock to be sold thereunder, the undersigned shall be released from all obligations under this Letter Agreement. The undersigned understands that the Underwriters are entering into the Underwriting Agreement and proceeding with the Public Offering in reliance upon this Letter Agreement.

This Letter Agreement and any claim, controversy or dispute arising under or related to this Letter Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Very truly yours,

[NAME OF STOCKHOLDER]

By: _____

Name:

Title:

PURCHASE CONTRACT AGREEMENT

Dated as of January 11, 2019

between

COLFAX CORPORATION

and

**U.S. BANK NATIONAL ASSOCIATION,
as Purchase Contract Agent,
as Attorney-in-Fact for the Holders from time to time as provided herein
and as Trustee under the Indenture referred to herein**

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PURCHASE CONTRACT AGREEMENT, dated as of January 11, 2019 between COLFAX CORPORATION, a Delaware corporation (the “**Company**”) and U.S. BANK NATIONAL ASSOCIATION, a national banking association acting as purchase contract agent and attorney-in-fact for the Holders of Purchase Contracts (as defined herein) from time to time (the “**Purchase Contract Agent**”) and as trustee under the Indenture (as defined herein).

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Agreement and the Units and Purchase Contracts issuable hereunder.

All things necessary to make the Units and the Purchase Contracts, when such are executed by the Company, and authenticated on behalf of the Holders and delivered by the Purchase Contract Agent, as provided in this Agreement, the valid obligations of the Company and to constitute this Agreement a valid agreement of the Company, in accordance with its terms, have been done. For and in consideration of the premises and the purchase of the Units (including the constituent parts thereof) by the Holders thereof, it is mutually agreed as follows:

ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular, and nouns and pronouns of the masculine gender include the feminine and neuter genders;

(b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with current generally accepted accounting principles in the United States;

(c) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Exhibit or other subdivision; and

(d) the following terms have the meanings given to them in this Section 1.01(d):

“**Acceleration Date**” has the meaning set forth in Section 4.10.

“**Affiliate**” means, when used with reference to a specified Person, any Person directly or indirectly controlling, or controlled by or under direct or indirect common control with the Person specified.

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

“**Applicable Market Value**” (i) with respect to Common Stock, means the arithmetic average of the Daily VWAPs of the Common Stock on each of the 20 consecutive Trading Days beginning on, and including, the 21st Scheduled Trading Day immediately preceding the Scheduled Mandatory Settlement Date, subject to adjustment as provided in Article 5 and (ii) with respect to any Exchange Property, has the meaning set forth in Section 5.02(a).

“**Applicants**” has the meaning set forth in Section 8.12(b).

“**Bankruptcy Event**” means the occurrence of one or more of the following events:

(a) a decree or order by a court having jurisdiction in the premises shall have been entered adjudging the Company a bankrupt or insolvent entity, or approving as properly filed a petition seeking reorganization of the Company under any Bankruptcy Law and if such decree or order shall have been entered more than 90 days prior to the last Trading Day of the 20 consecutive Trading Day period during which the Applicable Market Value is determined, such decree or order shall have continued undischarged and unstayed for a period of 90 days;

(b) a decree or order by a court having jurisdiction in the premises for the appointment of a receiver or liquidator or trustee or assignee (or other similar official) in bankruptcy or insolvency of the Company or of all or substantially all of its property, or for the winding up or liquidation of its affairs, shall have been entered and if such decree or order shall have been entered more than 90 days prior to the last Trading Day of the 20 consecutive Trading Day period during which the Applicable Market Value is determined, such decree or order shall have continued undischarged and unstayed for a period of 90 days; or

(c) the Company shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization under any Bankruptcy Law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or liquidator or trustee or assignee (or other similar official) in bankruptcy or insolvency of it or of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due.

“**Bankruptcy Law**” means title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

“**Beneficial Holder**” means, with respect to a Book-Entry Interest, a Person who is the beneficial owner of such Book-Entry Interest as reflected on the books of the Depository or on the books of a Person maintaining an account with the Depository (directly as a Depository Participant or as an indirect participant, in each case in accordance with the rules of the Depository).

“**Board of Directors**” means the board of directors of the Company or any duly authorized committee of that board or any director or directors and/or, with respect to the Notes, any officer or officers to whom that board or committee shall have duly delegated its authority.

“Board Resolution” means (a) one or more resolutions, certified by the secretary or an assistant secretary of the Company to have been duly adopted or consented to by the Board of Directors and to be in full force and effect, or (b), with respect to the Notes, a certificate signed by the director or directors and/or officer or officers to whom the Board of Directors or any duly authorized committee of that Board shall have duly delegated its authority, in each case, delivered to the Purchase Contract Agent.

“Book-Entry Interest” means a beneficial interest in a Global Security, registered in the name of a Depository or a nominee thereof, ownership and transfers of which shall be maintained and made through book entries by such Depository as described in Section 3.06.

“Business Day” means any day other than a Saturday, Sunday or any day on which banking institutions in New York, New York are authorized or obligated by applicable law or executive order to close or be closed.

“Capital Stock” means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of or in such Person’s capital stock or other equity interests, and options, rights or warrants to purchase such capital stock or other equity interests, whether now outstanding or issued after the Issue Date.

“Certificate of Incorporation” means the Amended and Restated Certificate of Incorporation of the Company as in effect on the Issue Date.

“Clearing Agency” means an organization registered as a “Clearing Agency” pursuant to Section 17A of the Exchange Act.

“close of business” means 5:00 p.m. (New York City time).

“Code” means the Internal Revenue Code of 1986 (title 26 of the United States Code), as amended from time to time.

“Common Stock” means the common stock, par value \$0.001 per share, of the Company as it existed on the date of this Agreement, subject to Section 5.02.

“Company” means the Person named as the “Company” in the first paragraph of this Agreement until a successor shall have become such pursuant to Article 10, and thereafter “Company” shall mean such successor or the issuer of any Exchange Property, as the context may require.

“Component Note” means a Note, in global form and attached to a Global Unit, that (a) shall evidence the number of Notes specified therein that are components of the Units evidenced by such Global Unit, (b) shall be registered on the security register for the Notes in the name of the Purchase Contract Agent, as attorney-in-fact of holder(s) of the Units of which such Notes form a part, and (c) shall be held by the Purchase Contract Agent as attorney-in-fact of such holder(s), together with such Global Unit, as custodian of such Global Unit for the Depository.

“**Component Purchase Contract**” means a Purchase Contract, in global form and attached to a Global Unit, that (a) shall evidence the number of Purchase Contracts specified therein that are components of the Units evidenced by such Global Unit, (b) shall be registered on the Security Register in the name of the Purchase Contract Agent, as attorney-in-fact of holder(s) of the Units of which such Purchase Contract forms a part, and (c) shall be held by the Purchase Contract Agent as attorney-in-fact of such holder(s), together with such Global Unit, as custodian of such Global Unit for the Depository.

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

“**Corporate Trust Office**” means the principal corporate trust office of the Purchase Contract Agent at which, at any particular time, its corporate trust business shall be principally administered, which office at the date hereof is located at Goodwin Square, 225 Asylum Street, 23rd Floor, Hartford, CT 06103.

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

“**Daily VWAP**” of the Common Stock on any Trading Day means such price per share as displayed under the heading “Bloomberg VWAP” on Bloomberg (or any successor service) page CFX <Equity> AQR (or its equivalent successor if such page is not available) in respect of the period from the scheduled open to 4:00 p.m., New York City time, on such Trading Day; or, if such price is not available, the market value per share of the Common Stock on such Trading Day as determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained by the Company for this purpose. The “**Daily VWAP**” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

“**default**” means any failure to comply with terms of this Agreement or any covenant contained herein.

“**Definitive Equity-Linked Security**” means an Equity-Linked Security in definitive form.

“**Definitive Security**” means any Security in definitive form.

“**Depository**” means a Clearing Agency that is acting as a depository for the Equity-Linked Securities and in whose name, or in the name of a nominee of that organization, shall be registered one or more Global Securities and which shall undertake to effect book-entry transfers of the Equity-Linked Securities as contemplated by Section 3.06, Section 3.07, Section 3.08 and Section 3.09.

“**Depository Participant**” means a broker, dealer, bank, other financial institution or other Person for whom from time to time the Depository effects book-entry transfers of securities deposited with the Depository.

“**Determination Date**” means each of (a) in the case of (x) a settlement of Purchase Contracts on the Mandatory Settlement Date or (y) a Merger Termination Redemption if the Merger Termination Redemption Stock Price is greater than the Reference Price and the Company elected to pay cash in lieu of a portion of any shares of Common Stock that would otherwise be included in the Redemption Amount, the last Trading Day of the 20 consecutive Trading Day period during which the Applicable Market Value or Merger Termination Redemption Market Value, as the case may be, is determined, (b) any Early Settlement Date, (c) any Fundamental Change Early Settlement Date, (d) the date of any Merger Termination Redemption Notice, if the Company elected (or is deemed to have elected) to settle the Redemption Amount solely by delivering shares of Common Stock, and (e) the day immediately preceding any Acceleration Date.

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

“**Early Settlement**” means, in respect of any Purchase Contract, that the Holder of such Purchase Contract has elected to settle such Purchase Contract early pursuant to Section 4.06 or Section 4.07, as the case may be.

“**Early Settlement Date**” has the meaning set forth in Section 4.06(c).

“**Early Settlement Notice**” has the meaning set forth in Section 4.06(b)(i).

“**Early Settlement Rate**” means, for any Purchase Contract in respect of which Early Settlement is applicable, the Minimum Settlement Rate on the Early Settlement Date, unless (i) the Holder of such Purchase Contract has elected to settle such Purchase Contract early in connection with a Fundamental Change pursuant to Section 4.07, in which case the “**Early Settlement Rate**” for such Purchase Contract means the Fundamental Change Early Settlement Rate, subject to adjustment as described in Section 5.01, (ii) the Holder of such Purchase Contract has elected to settle such Purchase Contract early with an Early Settlement Date that occurs on or prior to January 15, 2020 (other than, for the avoidance of doubt, any such election in connection with a Fundamental Change), in which case the Holder will receive upon settlement of such Purchase Contract a number of shares of Common Stock per Purchase Contract equal to 90% of the Minimum Settlement Rate on the Early Settlement Date; or (iii) the Holder of such Purchase Contract has elected to settle such Purchase Contract early with an Early Settlement Date that occurs after January 15, 2020 and on or prior to January 15, 2021 (other than, for the avoidance of doubt, any such election in connection with a Fundamental Change), in which case the Holder will receive upon settlement of such Purchase Contract a number of shares of Common Stock per Purchase Contract equal to 95% of the Minimum Settlement Rate on the Early Settlement Date, subject to adjustment as described in Section 5.01.

“**Early Settlement Right**” has the meaning set forth in Section 4.06(a).

“**Effective Date**” has the meaning set forth in Section 4.07(d).

“**Equity-Linked Security**” means a Unit or a Purchase Contract, as applicable.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and any statute successor thereto, in each case as amended from time to time, together with the rules and regulations promulgated thereunder.

“**Exchange Property**” has the meaning set forth in Section 5.02(a).

“**Ex-Date**” when used with respect to any issuance or distribution, means the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

“**Fair Market Value**” means, with respect to any asset, the price (after taking into account any liabilities relating to such assets) that would be negotiated in an arm’s-length transaction for cash between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction, as such price is determined in good faith by the Board of Directors, as evidenced by a Board Resolution.

“**Fixed Settlement Rate**” has the meaning set forth in Section 4.01(c).

A “**Fundamental Change**” shall be deemed to have occurred upon the occurrence of any of the following:

(a) any “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, any of its Subsidiaries and any of the Company’s and its Subsidiaries’ employee benefit plans, files a Schedule TO or any other schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the outstanding shares of the Common Stock;

(b) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or assets; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any person other than one of the Company’s Wholly Owned Subsidiaries;

(c) the Common Stock (or other common stock receivable upon settlement of the Purchase Contracts, if applicable) ceases to be listed or quoted on any of the NYSE, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors); or

(d) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company.

A transaction or transactions described in clause (b) above shall not constitute a Fundamental Change, however, if at least 90% of the consideration received or to be received by the common stockholders of the Company (excluding cash payments for fractional shares) in connection with such transaction or transactions consists of shares of common stock that are listed on any of the NYSE, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors), or will be so listed when issued or exchanged in connection with such transaction or transactions, and as a result of such transaction or transactions such consideration becomes the consideration receivable upon settlement of the Purchase Contracts, if applicable, excluding cash payments for fractional shares.

For purposes of the immediately preceding paragraph, any transaction that constitutes a Fundamental Change pursuant to both clause (a) and (b) of the definition thereof (prior to giving effect to the exception set forth in the immediately preceding paragraph) shall be deemed to be a transaction solely under clause (b) of such definition (and, for the avoidance of doubt, will be subject to the exception set forth in the immediately preceding paragraph).

If any transaction in which the Common Stock is replaced by the securities of another Person occurs, following completion of any related Fundamental Change Early Settlement Period (or, in the case of a transaction that would have been a Fundamental Change but for the second immediately preceding paragraph, following the Effective Date of such transaction), references to the Company in the definition of “**Fundamental Change**” above shall instead be references to such other Person.

“**Fundamental Change Early Settlement Date**” has the meaning set forth in Section 4.07(b).

“**Fundamental Change Early Settlement Period**” has the meaning set forth in Section 4.07(a).

“**Fundamental Change Early Settlement Rate**” has the meaning set forth in Section 4.07(d).

“**Fundamental Change Early Settlement Right**” has the meaning set forth in Section 4.07(a).

“**Global Note**” means a Note, as defined in the Indenture, in global form that (a) shall evidence the number of Separate Notes specified therein, (b) shall be registered on the security register for the Notes in the name of the Depositary or its nominee, and (c) shall be held by the Trustee as custodian for the Depositary.

“**Global Purchase Contract**” means a Purchase Contract in global form that (a) shall evidence the number of Separate Purchase Contracts specified therein, (b) shall be registered on the Security Register in the name of the Depositary or its nominee, and (c) shall be held by the Purchase Contract Agent as custodian for the Depositary.

“**Global Security**” means a Global Unit, a Global Purchase Contract or a Global Note, as applicable.

“**Global Unit**” means a Unit in global form that (a) shall evidence the number of Units specified therein, (b) shall be registered on the Security Register in the name of the Depositary or its nominee, (c) shall include, as attachments thereto, a Component Note and a Component Purchase Contract, evidencing, respectively, a number of Notes and a number of Purchase Contracts, in each case, equal to the number of Units evidenced by such Unit in global form, and (d) shall be held by the Purchase Contract Agent as custodian for the Depositary.

“**Holder**” means, with respect to a Unit or Purchase Contract, the Person in whose name the Unit or Purchase Contract, as the case may be, is registered in the Security Register, and with respect to a Note, the Person in whose name the Note is registered as provided for in the Indenture.

“**Indenture**” means the Indenture, dated as of January 11, 2019, between the Company and the Trustee (including any provisions of the TIA that are deemed incorporated therein), as supplemented by the First Supplemental Indenture, to be dated as of the Issue Date, between the Company and the Trustee, pursuant to which the Notes will be issued.

“**Installment Payment**” has the meaning set forth in the Indenture.

“**Issue Date**” means January 11, 2019.

“**Issuer Order**” means a written statement, request or order of the Company, which is signed in its name by the chairman of the Board of Directors, the chief financial officer, the president or chief executive officer, any senior vice president, any vice president or the treasurer of the Company, and delivered to the Purchase Contract Agent and/or the Trustee.

“**Last Reported Sale Price**” means with respect to a share of Common Stock on any date the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is traded; or if the Common Stock is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization; or if the Common Stock is not so quoted, the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“**Mandatory Settlement Date**” means the Scheduled Mandatory Settlement Date, subject to acceleration pursuant to Section 4.10; *provided that*, if one or more of the 20 consecutive Scheduled Trading Days beginning on, and including, the 21st Scheduled Trading Day immediately preceding the Scheduled Mandatory Settlement Date is not a Trading Day, the “Mandatory Settlement Date” shall be postponed until the second Scheduled Trading Day immediately following the last Trading Day of the 20 consecutive Trading Day period during which the Applicable Market Value is determined; provided, further that, if such date is not a Scheduled Trading Day, the next succeeding Scheduled Trading Day shall be the “Mandatory Settlement Date”.

“Market Disruption Event” means (i) a failure by the primary U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading to open for trading during its regular trading session or (ii) the occurrence or existence on such market prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

“Maximum Redemption Rate” has the meaning set forth in Section 4.09(e).

“Maximum Settlement Rate” has the meaning set forth under Section 4.01(b)(iii), subject to adjustment pursuant to the terms of Article 5.

“Merger” means the merger of Motion Merger Sub, Inc., a company organized under the laws of the State of Delaware and a wholly owned subsidiary of the Company, with and into DJO Global, Inc., a company organized under the laws of the State of Delaware, pursuant to the Merger Agreement.

“Merger Agreement” means that certain Agreement and Plan of Merger, dated as of November 19, 2018, between DJO Global, Inc., a Delaware Corporation, the Company, Motion Merger Sub, Inc., a Delaware corporation, and solely in its capacity as the Securityholder Representative, Grand Slam Holdings, LLC, a Delaware limited liability company.

“Merger Common Stock” has the meaning set forth in Section 5.02(e).

“Merger Termination Redemption” has the meaning set forth in Section 4.09(a).

“Merger Termination Redemption Market Value” means the arithmetic average of the Daily VWAPs of the Common Stock for the 20 consecutive Trading Days beginning on, and including, the 21st Scheduled Trading Day immediately preceding the Scheduled Merger Termination Redemption Settlement Date.

“Merger Termination Redemption Notice” has the meaning set forth in Section 4.09(a).

“Merger Termination Redemption Rate” has the meaning set forth in Section 4.09(d).

“Merger Termination Redemption Settlement Date” means, with respect to any Merger Termination Redemption: (i) if (x) the Merger Termination Redemption Stock Price is greater than the Reference Price and (y) the Company elects to pay cash in lieu of delivering any or all shares of Common Stock that would otherwise be included in the Redemption Amount, the second Business Day following the last Trading Day of the 20 consecutive Trading Day period used to determine the Merger Termination Redemption Market Value; or (ii) otherwise, the Scheduled Merger Termination Redemption Settlement Date specified in the Merger Termination Redemption Notice.

“Merger Termination Redemption Stock Price” means the arithmetic average of the Daily VWAPs of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of the related Merger Termination Redemption Notice.

“Minimum Redemption Rate” has the meaning set forth in Section 4.09(e).

“Minimum Settlement Rate” has the meaning set forth under Section 4.01(b)(i), subject to adjustment pursuant to the terms of Article 5.

“Minimum Stock Price” has the meaning set forth under Section 4.07(f).

“Notes” means the series of notes designated as the 6.50% Senior Amortizing Notes due 2022 to be issued by the Company under the Indenture, and **“Note”** means each note of such series having an initial principal amount of \$15.6099.

“NYSE” means the New York Stock Exchange.

“Officer’s Certificate” means a certificate signed by the chairman of the Board of Directors, the president or chief executive officer, the chief financial officer, any vice president, the treasurer, any assistant treasurer, the controller, any assistant controller, the secretary or any assistant secretary of the Company; except that the Officers’ Certificate described in Section 11.03 shall be signed by the principal executive officer, principal financial officer or principal accounting officer of the Company. Each such certificate shall include the statements provided for in Section 1.02 if and to the extent required by the provisions of such Section 1.02.

“open of business” means 9:00 a.m. (New York City time).

“Opinion of Counsel” means an opinion in writing signed by the chief counsel of the Company or by such other legal counsel who may be an employee of or counsel to the Company and who shall be reasonably satisfactory to the Purchase Contract Agent and/or the Trustee, as applicable. Each such opinion shall include the statements provided for in Section 1.02 if and to the extent required by the provisions of such Section 1.02.

“Outstanding Purchase Contracts” means, subject to the provisions of Section 6.03, as of the date of determination, all Purchase Contracts theretofore executed, authenticated on behalf of the Holder and delivered under this Agreement (including, for the avoidance of doubt, Purchase Contracts held as a component of Units and Separate Purchase Contracts), except:

(a) Purchase Contracts theretofore cancelled by the Purchase Contract Agent or delivered to the Purchase Contract Agent for cancellation or deemed cancelled pursuant to the provisions of this Agreement; and

(b) Purchase Contracts in exchange for or in lieu of which other Purchase Contracts have been executed, authenticated on behalf of the Holder and delivered pursuant to this Agreement, other than any such Purchase Contract in respect of which there shall have been presented to the Purchase Contract Agent proof satisfactory to it that such Purchase Contract is held by a protected purchaser in whose hands the Purchase Contracts are valid obligations of the Company.

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

“**Prospectus Supplement**” means the amended preliminary prospectus supplement dated January 8, 2019, as supplemented by the related pricing term sheet dated January 8, 2019, relating to the offering and sale of the Units.

“**Purchase Contract**” means a prepaid stock purchase contract obligating the Company to deliver shares of Common Stock on the terms and subject to the conditions set forth herein.

“**Purchase Contract Agent**” means the Person named as the “Purchase Contract Agent” in the first paragraph of this Agreement until a successor Purchase Contract Agent shall have become such pursuant to Article 8, and thereafter “Purchase Contract Agent” shall mean such Person.

“**Purchase Contract Settlement Fund**” has the meaning set forth in Section 4.03.

“**Record Date**” means, when used with respect to any dividend, distribution or other transaction or event in which the holders of the Common Stock have the right to receive any cash, securities or other property or in which the Common Stock is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

“**Redemption Amount**” has the meaning set forth in Section 4.09(c).

“**Reference Price**” means the Stated Amount, *divided by* the Maximum Settlement Rate, which as of the Issue Date is approximately equal to \$20.81.

“**Reorganization Event**” has the meaning set forth in Section 5.02(a).

“**Repurchase Date**” has the meaning set forth in the Indenture.

“**Repurchase Price**” has the meaning set forth in the Indenture.

“**Repurchase Right**” has the meaning set forth in the Indenture.

“**Responsible Officer**” means any officer of the Purchase Contract Agent with direct responsibility for the administration of this Agreement.

“**Scheduled Mandatory Settlement Date**” means January 15, 2022.

“**Scheduled Merger Termination Redemption Settlement Date**” means, with respect to any Merger Termination Redemption: (i) if (x) the Merger Termination Redemption Stock Price is greater than the Reference Price and (y) the Company elects to pay cash in lieu of delivering any or all of the shares of Common Stock that would otherwise be included in the Redemption Amount, a date, as specified by the Company in the relevant Merger Termination Redemption Notice, that is at least 25 and no more than 35 Scheduled Trading Days after the date of the Merger Termination Redemption Notice; or (ii) otherwise, a date, as specified by the Company in the relevant Merger Termination Redemption Notice, that is at least 10 and no more than 15 Business Days after the date of the Merger Termination Redemption Notice.

“**Scheduled Trading Day**” means a day that is scheduled to be a Trading Day on the NYSE or, if the Common Stock is not then listed on the NYSE, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock then traded. If the Common Stock is not so listed or admitted for trading, “**Scheduled Trading Day**” means a Business Day.

“**Securities Act**” means the Securities Act of 1933, as amended, and any statute successor thereto, in each case as amended from time to time, and the rules and regulations promulgated thereunder.

“**Security**” means a Unit, a Purchase Contract or a Note, as applicable.

“**Security Register**” has the meaning set forth in Section 3.05.

“**Security Registrar**” has the meaning set forth in Section 3.05.

“**Separate Note**” has the meaning set forth in Section 2.03(a).

“**Separate Purchase Contract**” has the meaning set forth in Section 2.03(a).

“**Settlement Date**” means (i) the second Business Day following any Fundamental Change Early Settlement Date, (ii) the second Business Day following any Early Settlement Date, (iii) any Merger Termination Redemption Settlement Date, or (iv) the Mandatory Settlement Date.

“**Settlement Rate**” has the meaning set forth in Section 4.01(b).

“**Spin-Off**” means the Company makes a distribution to all or substantially all holders of Common Stock consisting of Capital Stock of, or similar equity interests in, or relating to, a Subsidiary or other business unit of the Company that are or, upon issuance, will be, listed or quoted on a U.S. national securities exchange.

“**Stated Amount**” means \$100.

“**Stock Price**” has the meaning set forth in Section 4.07(d).

“**Subsidiary**” of any Person means any corporation or other entity of which a majority of the Capital Stock having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such corporation or other entity is at the time directly or indirectly owned or controlled by such Person.

“**Tender Offer Expiration Date**” has the meaning set forth in Section 5.01(a)(v).

“**Tender Offer Expiration Time**” has the meaning set forth in Section 5.01(a)(v)(A)(2).

“**Threshold Appreciation Price**” means an amount equal to the Stated Amount, *divided by* the Minimum Settlement Rate, which as of the Issue Date is approximately equal to \$25.00.

“**TIA**” means the Trust Indenture Act of 1939, as amended from time to time.

“**Trading Day**” means:

(a) for purposes of determining any consideration due at settlement of a Purchase Contract, a day on which (i) there is no Market Disruption Event and (ii) trading in the Common Stock (or other security for which a Daily VWAP must be determined) generally occurs on the NYSE or, if the Common Stock (or such other security) is not then listed on the NYSE, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock (or such other security) is then traded, or if the Common Stock (or such other security) is not so listed or traded, “**Trading Day**” means a Business Day; and

(b) for all other purposes (including, for the avoidance of doubt, Section 5.01), a day on which (i) trading in the Common Stock (or other security for which a closing sale price must be determined) generally occurs on the NYSE or, if the Common Stock (or such other security) is not then listed on the NYSE, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock (or such other security) is then traded, and (ii) a Last Reported Sale Price for the Common Stock (or closing sale price for such other security) is available on such securities exchange or market, or if the Common Stock (or such other security) is not so listed or traded, “**Trading Day**” means a Business Day.

“**Trustee**” means U.S. Bank National Association, as trustee under the Indenture, or any successor thereto.

“**Unit**” means the collective rights of a Holder of a unit consisting of a single Purchase Contract and a single Note prior to separation pursuant Section 2.03 or subsequent to recreation pursuant to Section 2.04.

“**Underwriters**” means J.P. Morgan Securities LLC and Credit Suisse Securities (USA) LLC, as representatives of the several underwriters listed on Schedule 1 of the Underwriting Agreement.

“**Underwriting Agreement**” means that certain Underwriting Agreement, dated as of January 8, 2019 among the Company and the Underwriters.

“**Valuation Period**” has the meaning set forth in Section 5.01(a)(iii)(B)(1).

“**Wholly Owned Subsidiary**” means, with respect to any Person, any Subsidiary of such Person, except that, solely for the purposes of this definition, the reference to “a majority of the Capital Stock” in the definition of “Subsidiary” shall be deemed replaced by a reference to “all of the Capital Stock”.

Section 1.02. Compliance Certificates and Opinions. Except as otherwise expressly provided by this Agreement, upon any application or request by the Company to the Purchase Contract Agent and/or Trustee to take any action in accordance with any provision of this Agreement, the Company shall furnish to the Purchase Contract Agent and/or Trustee, as applicable, an Officer’s Certificate stating that all conditions precedent, if any, provided for in this Agreement 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, if any, have been complied with.

Every Officer’s Certificate or opinion with respect to compliance with a condition or covenant provided for in this Agreement shall include:

- (i) a statement that the person signing such Officer’s Certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officer’s Certificate or opinion are based;
- (iii) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable such individual to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (iv) a statement as to whether, in the opinion of such person, such condition or covenant has been complied with.

Any certificate, statement or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate, 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 counsel may be based, insofar as it relates to factual matters, on information with respect to which is in the possession of the Company as applicable, 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, as applicable, or of counsel may be based, insofar 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, as applicable, unless such officer or counsel, as the case may be, 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 and directed to the Trustee shall contain a statement that such firm is independent.

Section 1.03. Notices. Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the Purchase Contract Agent or by the Holders to or on the Company may be given or served by being deposited postage prepaid, first class mail (except as otherwise specifically provided herein) addressed (until another address of the Company is filed by the Company with the Purchase Contract Agent) to Colfax Corporation, 420 National Business Parkway, 5th Floor, Annapolis Junction, Maryland 20701. Any notice, direction, request or demand by the Company or any Holder to or upon the Purchase Contract Agent or the Trustee shall be deemed to have been sufficiently given or served by being deposited postage prepaid, first class mail (except as otherwise specifically provided herein) addressed (until another address of the Purchase Contract Agent or Trustee is filed by the Purchase Contract Agent or Trustee with the Company) to U.S. Bank National Association, Goodwin Square, 225 Asylum Street, 23rd Floor, Hartford CT 06103, Attention: Corporate Trust Services, re: Colfax Corporation.

Where this Agreement 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 his last address as it appears in the Security Register; *provided, however,* that, in the case of a Global Unit or Global Purchase Contract, electronic notice may be given to the Depositary, as the Holder thereof, in accordance with the applicable procedures of the Depositary. Where this Agreement 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. Waivers of notice by Holders shall be filed with the Purchase Contract Agent, 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 when such notice is required to be given pursuant to any provision of this Agreement, then any manner of giving such notice as shall be reasonably satisfactory to the Purchase Contract Agent shall be deemed to be sufficient notice.

Section 1.04. Effect of Headings and Table of Contents. The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.05. Successors and Assigns. All covenants and agreements in this Agreement by the Company and the Purchase Contract Agent shall bind their respective successors and assigns, whether so expressed or not.

Section 1.06. Separability Clause. In case any provision in this Agreement or in the Purchase Contracts shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof and thereof shall not in any way be affected or impaired thereby.

Section 1.07. Benefits of Agreement. Nothing contained in this Agreement or in the Purchase Contracts, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and, to the extent provided hereby, the Holders, any benefits or any legal or equitable right, remedy or claim under this Agreement. The Holders from time to time shall be beneficiaries of this Agreement and shall be bound by all of the terms and conditions hereof and of the Purchase Contracts by their acceptance of delivery of such Purchase Contracts.

Section 1.08. Governing Law. This Agreement, the Units and the Purchase Contracts shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 1.09. Conflict with Indenture. To the extent that any provision of this Purchase Contract Agreement relating to the Notes conflicts with or is inconsistent with the Indenture, the Indenture shall govern.

Section 1.10. Legal Holidays. In any case where any Settlement Date shall not be a Business Day, notwithstanding any other provision of this Agreement or the Purchase Contracts, the settlement or redemption of the Purchase Contracts shall not be effected on such date, but instead shall be effected on the next succeeding Business Day with the same force and effect as if made on such Settlement Date, and no interest or other amounts shall accrue or be payable by the Company or to any Holder in respect of such delay.

Section 1.11. Counterparts. This Agreement may be executed in any number of counterparts by the parties hereto on separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

Section 1.12. Inspection of Agreement. Unless a conformed copy of this Agreement has been filed on the EDGAR system of the U.S. Securities and Exchange Commission, a copy of this Agreement shall be available at all reasonable times during normal business hours at Colfax Corporation, 420 National Business Parkway, 5th Floor, Annapolis Junction, MD 20701 for inspection by any Holder or Beneficial Holder.

Section 1.13. Calculations. The solicitation of any necessary bids and the performance of any calculations to be made hereunder and under the Units and Purchase Contracts shall be the sole obligation of the Company, and the Purchase Contract Agent shall have no obligation to make, review or verify such calculations. These calculations include, but are not limited to, determination of the applicable Settlement Rate, the Fixed Settlement Rates, the Early Settlement Rate, the Merger Termination Redemption Rate, the Fundamental Change Early Settlement Rate, the Applicable Market Value, the Merger Termination Redemption Market Value, the Last Reported Sale Price and the Daily VWAP, as the case may be. All such calculations made by the Company or its agent hereunder shall be made in good faith and, absent manifest error, be final and binding on the Purchase Contract Agent, the Trustee, each Paying Agent and the Holders.

For any calculations to be made by the Company or its agent hereunder, the Company shall provide a schedule of such calculations to the Purchase Contract Agent and the Trustee, and each of the Purchase Contract Agent and the Trustee shall be entitled to conclusively rely upon the accuracy of the calculations by the Company or its agent without independent verification, shall have no liability with respect thereto and shall have no liability to the Holders for any loss any of them may incur in connection with no independent verification having been done. Furthermore, the Purchase Contract Agent shall not be under any duty or responsibility to determine whether any facts exist which may require any adjustment hereunder, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed.

Section 1.14. UCC. Each Purchase Contract (whether or not included in a Unit) is a security governed by Article 8 of the Uniform Commercial Code as in effect in the State of New York on the date hereof.

Section 1.15. Waiver of Jury Trial. Each party hereto waives its respective rights to trial by jury in any action or proceeding arising out of or related to the Purchase Contracts, this Agreement or the transactions contemplated hereby, to the maximum extent permitted by law.

ARTICLE II UNIT AND PURCHASE CONTRACT FORMS

Section 2.01. Forms of Units and Purchase Contracts Generally. (a) The Units and Purchase Contracts shall be in substantially the forms set forth in Exhibit A and Exhibit B hereto, respectively, which shall be incorporated in and made a part of this Purchase Contract Agreement, with such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as may be required by the rules of any securities exchange on which the Units or Purchase Contracts, as the case may be, are (or may in the future be) listed or any depository therefor, or as may, consistently herewith, be determined by the officers of the Company executing such Units and Purchase Contracts, as the case may be, as evidenced by their execution thereof.

(b) The Units and Purchase Contracts shall be issuable only in registered form and only in denominations of a single Unit or Purchase Contract, as the case may be, and any integral multiple thereof.

(c) The Units will initially be issued in the form of one or more fully registered Global Units as set forth in Section 3.06. The Purchase Contracts will initially be issued as Component Purchase Contracts substantially in the form of Attachment 3 to the form of Global Unit attached as Exhibit A hereto, and will be attached to the related Global Unit and registered in the name of U.S. Bank National Association, as attorney-in-fact of the holder(s) of such Global Unit.

(d) Definitive Securities shall be printed, lithographed or engraved with steel engraved borders or may be produced in any other manner, all as determined by the officers of the Company executing the Units or Purchase Contracts, as the case may be, evidenced by such Definitive Securities, consistent with the provisions of this Agreement, as evidenced by their execution thereof.

(e) Every Global Unit and Global Purchase Contract executed, authenticated on behalf of the Holders and delivered hereunder shall bear a legend in substantially the following form:

“THIS SECURITY IS A GLOBAL [UNIT / PURCHASE CONTRACT] WITHIN THE MEANING OF THE PURCHASE CONTRACT AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY OR A SUCCESSOR DEPOSITARY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN CERTIFICATED FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (THE “**DEPOSITARY**”) TO THE NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY 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 DEPOSITARY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.”

Section 2.02. Form of Certificate of Authentication. The form of certificate of authentication of the Units and Purchase Contracts shall be in substantially the form set forth in the form of Unit or form of Purchase Contract, respectively, attached hereto.

Section 2.03. Global Securities; Separation of Units.

(a) On any Business Day during the period beginning on, and including, the Business Day immediately following the Issue Date to, but excluding, the second Scheduled Trading Day immediately preceding the Scheduled Mandatory Settlement Date or, if earlier, the second Scheduled Trading Day immediately preceding any Merger Termination Redemption Settlement Date and also excluding the Business Day immediately preceding any Installment Payment Date (*provided* that the right to separate the Units shall resume after such Business Day), a Holder of a Unit may separate such Unit into its constituent Purchase Contract and Note (each such separated Purchase Contract and separated Note, a “**Separate Purchase Contract**” and “**Separate Note**,” respectively), which will thereafter trade under their respective CUSIP numbers (194014 403) and (194014 304), and that Unit will cease to exist. In order to cause the separation of a Global Unit into its component parts, a Beneficial Holder must comply with the applicable procedures of the Depositary. Following a valid exercise of separation rights by a Holder of Global Units, the Purchase Contract Agent or Trustee, as applicable, shall register (i) a decrease in the number of Units represented by the

Global Unit and the number of Purchase Contracts and Notes represented by the Component Purchase Contract and the Component Note attached to the Global Unit as Attachments 3 and 4, respectively, as set forth in Schedule A to each such attachment, and (ii) a corresponding increase in the number of Purchase Contracts and Notes represented by the Global Purchase Contract and the Global Note, respectively. If, however, such Unit is in the form of a Definitive Security in accordance with Section 3.09, the Holder thereof must deliver to the Purchase Contract Agent such Unit, together with a separation notice, in the form set forth in Attachment 1 to the form of Unit attached hereto as Exhibit A. Upon the receipt of such separation notice, the Company shall promptly cause delivery, in accordance with the delivery instructions set forth in such separation notice, of one Separate Purchase Contract and one Separate Note for each such Unit. Separate Purchase Contracts and Separate Notes will be transferable independently from each other.

(b) Holders which elect to separate the Note and related Purchase Contract in accordance with this Section 2.03 shall be responsible for any fees or expenses payable in connection with such separation, and neither the Company, the Purchase Contract Agent nor the Trustee shall be liable for any such fees or expenses.

Section 2.04. Recreation of Units.

(a) On any Business Day during the period beginning on, and including, the Business Day immediately following the Issue Date to, but excluding, the second Scheduled Trading Day immediately preceding the Scheduled Mandatory Settlement Date or, if earlier, the second Scheduled Trading Day immediately preceding any Merger Termination Redemption Settlement Date and also excluding the Business Day immediately preceding any Installment Payment Date (*provided* that the right to recreate the Units shall resume after such Business Day), a Holder of a Separate Purchase Contract and a Separate Note may recreate a Unit (which will thereafter trade under the CUSIP number 194014 205 for the Units), and each such Separate Purchase Contract and Separate Note will cease to exist. In order to cause the recreation of a global Separate Purchase Contract and a global Separate Note into a Unit, a Beneficial Holder must comply with the applicable procedures of the Depository. Following a valid exercise of recreation rights by a Holder of Global Notes and Global Purchase Contracts, the Purchase Contract Agent or Trustee, as applicable, shall register (i) an increase in the number of Units represented by the Global Unit and the number of Purchase Contracts and Notes represented by the Component Purchase Contract and the Component Note attached to the Global Unit as Attachments 3 and 4, respectively, as set forth in Schedule A to each such attachment, and (ii) a corresponding decrease in the number of Purchase Contracts and Notes represented by the Global Purchase Contract and Global Note, respectively. If, however, such Separate Purchase Contract and Separate Note are in the form of Definitive Securities, the Holder thereof must deliver to the Purchase Contract Agent such Definitive Securities, together with a recreation notice, in the form set forth in Attachment 2 to the form of Unit attached hereto as Exhibit A. Upon the receipt of such recreation notice, the Company shall promptly cause delivery, in accordance with the delivery instructions set forth in such recreation notice, of one Unit in definitive form for such Definitive Securities.

(b) Holders that recreate Units in accordance with this Section 2.04 shall be responsible for any fees or expenses payable in connection with such recreation, and neither the Company, the Purchase Contract Agent nor the Trustee shall be liable for any such fees or expenses.

ARTICLE III THE UNITS AND PURCHASE CONTRACTS

Section 3.01. Amount and Denominations. The aggregate number of Units and Separate Purchase Contracts evidenced by Equity-Linked Securities executed, authenticated on behalf of the Holders and delivered hereunder is limited to 4,600,000, except for Units and Separate Purchase Contracts executed, authenticated and delivered upon registration of transfer of, in exchange for, or in lieu of, other Units and Separate Purchase Contracts pursuant to Section 3.04, Section 3.05, Section 3.10 or Section 9.05. Each Unit was initially issued for a purchase price of \$100.00 (before underwriting discounts and commissions), which represented an issue price of \$15.6099 for the Note contained in each Unit and an issue price of \$84.3901 for the Purchase Contract contained in each Unit.

Section 3.02. Rights and Obligations Evidenced by the Equity-Linked Securities. Each Equity-Linked Security shall evidence the number of Units or Separate Purchase Contracts, as the case may be, specified therein, with (a) each such Unit representing the rights and obligations of the Holder thereof and of the Company under one Purchase Contract, and the rights and obligations of the Holder thereof and of the Company under one Note, and (b) each such Separate Purchase Contract representing the rights and obligations of the Holder thereof and of the Company under one Separate Purchase Contract. In the case of a Unit, the Holder of such Unit shall, for all purposes hereunder and under the Indenture, be deemed to be the Holder of the Note and Purchase Contract that are components of such Unit.

Prior to the close of business on the Determination Date with respect to any Purchase Contract (whether such Purchase Contract is held as a component of a Unit or as a Separate Purchase Contract), the shares of Common Stock underlying such Purchase Contract shall not be outstanding, and such Purchase Contract shall not entitle the Holder thereof to any of the rights of a holder of Common Stock, including, without limitation, the right to vote or receive any dividends or other payments or to consent or to receive notice as a shareholder in respect of the meetings of shareholders or for the election of directors for any other matter, or any other rights whatsoever as a shareholder of the Company.

Section 3.03. Execution, Authentication, Delivery and Dating. Upon the execution and delivery of this Agreement, and at any time and from time to time thereafter, the Company may deliver Equity-Linked Securities executed by the Company and the Purchase Contract Agent as attorney-in-fact for the Holders of Purchase Contracts from time to time (in the case of Purchase Contracts), to the Purchase Contract Agent and Trustee (if applicable) for authentication on behalf of the Holders and delivery, together with an Issuer Order for authentication of such Equity-Linked Securities, and the Purchase Contract Agent and Trustee (if applicable) in accordance with such Issuer Order shall authenticate on behalf of the Holders and deliver such Equity-Linked Securities.

The Equity-Linked Securities shall be executed on behalf of the Company by any authorized officer of the Company and, in the case of the Purchase Contracts, shall be executed on behalf of the Holders by any authorized officer of the Purchase Contract Agent as attorney-in-fact for the Holders of Purchase Contracts from time to time. The signature of any such officer on the Equity-Linked Securities may be manual or facsimile.

Equity-Linked Securities bearing the manual or facsimile signature of an individual who was at any time the proper officer of the Company or, in the case of the Purchase Contracts, the Purchase Contract Agent, shall bind the Company and the Holders of Purchase Contracts, as the case may be, notwithstanding that such individual has ceased to hold such offices prior to the authentication and delivery of such Equity-Linked Securities or did not hold such offices at the date of such Equity-Linked Securities.

Each Equity-Linked Security shall be dated the date of its authentication.

No Equity-Linked Security shall be entitled to any benefit under this Agreement or be valid or obligatory for any purpose unless there appears on such Equity-Linked Security a certificate of authentication substantially in the form provided for herein executed by an authorized officer of the Purchase Contract Agent and Trustee (if applicable) by manual signature, and such certificate upon any Equity-Linked Security shall be conclusive evidence, and the only evidence, that such Equity-Linked Security has been duly authenticated and delivered hereunder.

Section 3.04. Temporary Equity-Linked Securities. Pending the preparation of any Definitive Equity-Linked Securities, the Company shall execute and deliver to the Purchase Contract Agent and, in the case of Units, Trustee, and the Purchase Contract Agent and, if applicable, Trustee shall authenticate on behalf of the Holders, and deliver, in lieu of such Definitive Equity-Linked Securities, temporary Equity-Linked Securities that are in substantially the form set forth in Exhibit A or Exhibit B hereto, as the case may be, with such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as may be required by the rules of any securities exchange on which the Units or Separate Purchase Contracts, as the case may be, are listed, or as may, consistently herewith, be determined by the officers of the Company executing such Equity-Linked Securities, as evidenced by their execution of the Equity-Linked Securities.

If temporary Equity-Linked Securities are issued, the Company will cause Definitive Equity-Linked Securities to be prepared without unreasonable delay. After the preparation of Definitive Equity-Linked Securities, the temporary Equity-Linked Securities shall be exchangeable for Definitive Equity-Linked Securities upon surrender of the temporary Equity-Linked Securities at the Corporate Trust Office, at the expense of the Company and without charge to the Holder or the Purchase Contract Agent. Upon surrender for cancellation of any one or more temporary Equity-Linked Securities, the Company shall execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and, if applicable, the Trustee shall authenticate on behalf of the Holder, and deliver in exchange therefor, one or more Definitive Equity-Linked Securities of like tenor and denominations and evidencing a like number of Units or Separate Purchase Contracts, as the case may be, as the temporary Equity-Linked Security or Equity-Linked Securities so surrendered. Until so exchanged, the temporary Equity-Linked Securities shall in all respects evidence the same benefits and the same obligations with respect to the Units or Separate Purchase Contracts, as the case may be, evidenced thereby as Definitive Equity-Linked Securities.

Section 3.05. Registration; Registration of Transfer and Exchange. The Company shall cause to be kept at the Corporate Trust Office a register (the “**Security Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Equity-Linked Securities and of transfers of Equity-Linked Securities. The Purchase Contract Agent is hereby initially appointed security registrar (the “**Security Registrar**”) for the purpose of registration of Equity-Linked Securities and transfers of Equity-Linked Securities as provided herein. The Security Registrar shall record separately the registration and transfer of the Equity-Linked Securities evidencing Units and Separate Purchase Contracts.

Upon surrender for registration of transfer of any Equity-Linked Security at the Corporate Trust Office, the Company shall execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and Trustee shall authenticate on behalf of the designated transferee or transferees, and deliver, in the name of the designated transferee or transferees, one or more new Equity-Linked Securities of any authorized denominations, of like tenor, and evidencing a like number of Units or Separate Purchase Contracts, as the case may be.

At the option of the Holder, Equity-Linked Securities may be exchanged for other Equity-Linked Securities, of any authorized numbers and evidencing a like number of Units or Separate Purchase Contracts, as the case may be, upon surrender of the Equity-Linked Securities to be exchanged at the Corporate Trust Office. Whenever any Equity-Linked Securities are so surrendered for exchange, the Company shall execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and, in the case of Units, the Trustee shall authenticate on behalf of the Holder, and deliver the Equity-Linked Securities which the Holder making the exchange is entitled to receive.

All Equity-Linked Securities issued upon any registration of transfer or exchange of an Equity-Linked Security shall evidence the ownership of the same number of Units or Separate Purchase Contracts, as the case may be, and be entitled to the same benefits and subject to the same obligations, under this Agreement as the Units or Separate Purchase Contracts, as the case may be, evidenced by the Equity-Linked Security surrendered upon such registration of transfer or exchange.

Every Equity-Linked Security presented or surrendered for registration of transfer or exchange shall (if so required by the Purchase Contract Agent) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Purchase Contract Agent duly executed by the Holder thereof, or its attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of an Equity-Linked Security, but the Company or the Purchase Contract Agent on behalf of the Company may require payment from the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Equity-Linked Securities, other than any exchanges pursuant to Section 3.06 and Section 9.05 not involving any transfer.

Notwithstanding the foregoing, the Company shall not be obligated to execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent and, in the case of Units, the Trustee shall not be obligated to authenticate on behalf of the Holder or deliver any Equity-Linked Security in exchange for any other Equity-Linked Security presented or surrendered for registration of transfer or for exchange on or after the Business Day immediately preceding the Scheduled Mandatory Settlement Date or any earlier Settlement Date with respect to such Equity-Linked Security. In lieu of delivery of a new Equity-Linked Security, upon satisfaction of the applicable conditions specified above in this Section and receipt of appropriate registration or transfer instructions from such Holder, the Company shall, if a Settlement Date with respect to such Equity-Linked Security has occurred, deliver or cause to be delivered the shares of Common Stock deliverable and cash in lieu of any fractional share of Common Stock (and/or, in the case of a Merger Termination Redemption Settlement Date, make the required cash payment, if any) in respect of the Purchase Contracts evidenced by such Equity-Linked Security (together with the Separate Note, if such Equity-Linked Security is a Unit and if the Repurchase Right is not applicable or, if applicable, not exercised).

Section 3.06. Book-Entry Interests. The Units, on original issuance, will be issued in the form of one or more fully registered Global Units, to be delivered to the Depository or its custodian by, or on behalf of, the Company. The Company hereby designates DTC as the initial Depository. Such Global Units shall initially be registered on the books and records of the Company in the name of Cede & Co., the nominee of DTC, and no Beneficial Holder will receive a Definitive Unit representing such Beneficial Holder's interest in such Global Unit, except as provided in Section 3.09. Unless and until definitive, fully registered Securities have been issued to Beneficial Holders pursuant to Section 3.09:

(i) the provisions of this Section 3.06 shall be in full force and effect;

(ii) the Company shall treat the Depository for all purposes of this Agreement (including settling the Purchase Contracts and receiving approvals, votes or consents hereunder) as the Holder of the Global Units and Global Purchase Contracts and shall have no obligation to the Beneficial Holders;

(iii) to the extent that the provisions of this Section 3.06 conflict with any other provisions of this Agreement, the provisions of this Section 3.06 shall control; and

(iv) the rights of the Beneficial Holders shall be exercised only through the Depository and shall be limited to those established by law and agreements between such Beneficial Holders and the Depository or the Depository Participants.

Section 3.07. Notices to Holders. Whenever a notice or other communication to the Holders is required to be given under this Agreement, the Company or the Company's agent shall give such notices and communications to the Holders and, with respect to any Units or Purchase Contracts registered in the name of the Depository or the nominee of the Depository, the Company or the Company's agent shall, except as set forth herein, have no obligations to the Beneficial Holders.

Section 3.08. Appointment of Successor Depository. If the Depository elects to discontinue its services as securities depository with respect to the Units or Purchase Contracts, the Company may, in its sole discretion, appoint a successor Depository with respect to such Units or such Purchase Contracts, as the case may be.

Section 3.09. Definitive Securities. If:

(i) the Depository is at any time unwilling or unable to continue as depository for the Global Securities or ceases to be a Clearing Agency registered under the Exchange Act, and a successor Depository registered as a Clearing Agency under the Exchange Act is not appointed by the Company within 90 days; or

(ii) an Event of Default (as defined in the Indenture), or any failure on the part of the Company to observe or perform any covenant or agreement in the Purchase Contracts or the Purchase Contract Agreement, has occurred and is continuing and a Beneficial Holder requests that its Securities be issued in physical, certificated form,

then, in each case the Company shall execute, and the Purchase Contract Agent and/or the Trustee, as applicable, upon receipt of an Issuer Order for the authentication and delivery of Definitive Securities, shall authenticate and deliver Definitive Securities representing an aggregate number of Securities with respect to the Global Security or Securities representing such Securities (or representing an aggregate number of Securities equal to the aggregate number of Securities in respect of which such Beneficial Holder has requested the issuance of Definitive Securities pursuant to clause (ii) above) in exchange for such Global Security or Securities (or portion thereof). Each Definitive Security so delivered shall evidence Units or Purchase Contracts or Notes, as the case may be, of the same kind and tenor as the Global Security so surrendered in respect thereof. Notwithstanding the foregoing, the exchange of Global Notes for Notes in definitive form shall be governed by the Indenture.

Section 3.10. Mutilated, Destroyed, Lost and Stolen Securities. If any mutilated Equity-Linked Security is surrendered to the Purchase Contract Agent, together with such security or indemnity as may be reasonably required by the Company, the Purchase Contract Agent and the Trustee to hold them or any of their agents harmless, then the Company shall execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and, if applicable, the Trustee shall authenticate on behalf of the Holder, and deliver in exchange therefor, a new Equity-Linked Security, evidencing the same number of Units or Separate Purchase Contracts, as the case may be, and bearing a security number not contemporaneously outstanding.

If there shall be delivered to the Company, the Purchase Contract Agent and the Trustee (in the case of any Units) (i) evidence to their satisfaction of the destruction, loss or theft of any Equity-Linked Security, and (ii) such security or indemnity satisfactory to the Company, the Purchase Contract Agent and the Trustee at the expense of the Holder, then, in the absence of notice to the Company, the Purchase Contract Agent or the Trustee that such Equity-Linked

Security has been acquired by a protected purchaser, the Company shall execute and deliver to the Purchase Contract Agent and the Trustee (in the case of any Units), and the Purchase Contract Agent and the Trustee (in the case of any Units) shall authenticate on behalf of the Holder, and deliver to the Holder, in lieu of any such destroyed, lost or stolen Equity-Linked Security, a new Equity-Linked Security, evidencing the same number of Units or Separate Purchase Contracts, as the case may be, and bearing a security number not contemporaneously outstanding.

Notwithstanding the foregoing, the Company shall not be obligated to execute and deliver to the Purchase Contract Agent and Trustee, and the Purchase Contract Agent and, in the case of Units, the Trustee shall not be obligated to authenticate on behalf of the Holder, and deliver to the Holder, an Equity-Linked Security on or after the second Scheduled Trading Day immediately preceding the Scheduled Mandatory Settlement Date or any Merger Termination Redemption Settlement Date with respect to such Equity-Linked Security. In lieu of delivery of a new Equity-Linked Security, upon satisfaction of the applicable conditions specified above in this Section and receipt of appropriate registration or transfer instructions from such Holder, the Company shall, if a Settlement Date with respect to such Equity-Linked Security has occurred, deliver or arrange for delivery of the shares of Common Stock deliverable and cash in lieu of any fractional share of Common Stock (and/or, in the case of a Merger Termination Redemption Settlement Date, make the required cash payment, if any) in respect of the Purchase Contracts evidenced by such Equity-Linked Security (together with Separate Notes equal to the number of, and in the same form as, the Notes evidenced by such Equity-Linked Security if such Equity-Linked Security is a Unit and if the Repurchase Right is not applicable or, if applicable, not exercised).

Upon the issuance of any new Equity-Linked Security under this Section 3.10, the Company and the Purchase Contract Agent may require the payment by the Holder 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 Purchase Contract Agent) connected therewith.

Every new Equity-Linked Security issued pursuant to this Section 3.10 in lieu of any destroyed, lost or stolen Equity-Linked Security shall constitute an original additional contractual obligation of the Company and of the Holder in respect of the Unit or Separate Purchase Contract, as the case may be, evidenced thereby, whether or not the destroyed, lost or stolen Equity-Linked Security shall be found at any time. Such new Equity-Linked Security (and the Units or Separate Purchase Contracts, as applicable, evidenced thereby) shall be at any time enforceable by anyone, and shall be entitled to all the benefits and be subject to all the obligations of this Agreement equally and proportionately with any and all other Equity-Linked Securities delivered hereunder.

The provisions of this Section 3.10 are exclusive and shall preclude, to the extent lawful, all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Equity-Linked Securities.

Section 3.11. Persons Deemed Owners. Prior to due presentment of an Equity-Linked Security for registration of transfer, the Company, the Purchase Contract Agent and the Trustee, and any agent of the Company, the Purchase Contract Agent or the Trustee, may treat the Person in whose name such Equity-Linked Security is registered as the owner of the Unit or Purchase Contract, as the case may be, evidenced thereby, for the purpose of performance of the Units or Purchase Contracts, as applicable, evidenced by such Equity-Linked Securities and for all other purposes whatsoever, and none of the Company, the Purchase Contract Agent nor the Trustee, nor any agent of the Company, the Purchase Contract Agent nor the Trustee, shall be affected by notice to the contrary.

Notwithstanding the foregoing, with respect to any Global Unit or Global Purchase Contract, nothing contained herein shall prevent the Company, the Purchase Contract Agent, the Trustee or any agent of the Company, the Purchase Contract Agent or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by the Depository (or its nominee), as a Holder, with respect to such Global Unit or Global Purchase Contract or impair, as between such Depository and the related Beneficial Holder, the operation of customary practices governing the exercise of rights of the Depository (or its nominee) as Holder of such Global Unit or Global Purchase Contract.

None of the Purchase Contract Agent, Trustee, the Paying Agent and the Security Registrar shall have any responsibility or obligation to any Beneficial Holder in a Global Security, an agent member or other Person with respect to the accuracy of the records of the Depository or its nominee or of any agent member, with respect to any ownership interest in the Securities or with respect to the delivery to any agent member, Beneficial Holder or other Person (other than the Depository) of any notice or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Securities and this Agreement shall be given or made only to or upon the order of the registered Holders (which shall be the Depository or its nominee in the case of a Global Security). The rights of Beneficial Holders in Global Securities shall be exercised only through the Depository subject to the applicable procedures. The Purchase Contract Agent, the Trustee, the Paying Agent and the Registrar shall be entitled to rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, DTC Participants and any Beneficial Holders. The Purchase Contract Agent, the Trustee, the Paying Agent and the Security Registrar shall be entitled to deal with the Depository, and any nominee thereof, that is the registered Holder of any Global Security for all purposes of this Agreement relating to such Global Security (including the payment or delivery of amounts due hereunder and the giving of instructions or directions by or to any Beneficial Holder) as the sole Holder of such Global Security and shall have no obligations to the Beneficial Holders thereof. None of the Purchase Contract Agent, the Trustee, the Paying Agent and the Security Registrar shall have any responsibility or liability for any acts or omissions of the Depository with respect to such Global Security, for the records of any such Depository, including records in respect of the Beneficial Holders of any such Global Security, for any transactions between the Depository and any agent member or between or among the Depository, any such agent member and/or any Holder or Beneficial Holder of such Global Security, or for any transfers of beneficial interests in any such Global Security.

Notwithstanding the foregoing, with respect to any Global Security, nothing herein shall prevent the Company, the Purchase Contract Agent, the Trustee, or any agent of the Company, the Purchase Contract Agent or the Trustee from giving effect to any written certification, proxy or other authorization furnished by any depository (or its nominee), as a Holder, with respect to such Global Security or shall impair, as between such Depository and Beneficial Holders of such Global Security, the operation of customary practices governing the exercise of the rights of such depository (or its nominee) as Holder of such Global Security.

None of the Purchase Contract Agent, the Trustee, the Paying Agent or the Registrar shall have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Agreement or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among DTC Participants, members or Beneficial Holders in any Global Security) 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 Agreement, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 3.12. Cancellation. All Securities surrendered for separation or recreation and all Equity-Linked Securities surrendered for settlement or redemption or upon the registration of transfer or exchange of an Equity-Linked Security shall, if surrendered to any Person other than the Purchase Contract Agent, be delivered to the Purchase Contract Agent and, if not already cancelled, be promptly cancelled by it; *provided, however*, that the Purchase Contract Agent shall deliver any Notes or Separate Notes so surrendered to it to the Trustee and Paying Agent (as defined in the Indenture) for disposition in accordance with the provisions of the Indenture. In the case of a Unit or Units surrendered for settlement or redemption, subject to Section 4.08 hereof, the Company shall promptly execute and the Trustee shall promptly authenticate and deliver in accordance with the terms of the Indenture to the Holder thereof a number of Separate Notes equal to the number of, and in the same form as, the Notes comprising part of the Units so surrendered. The Company may at any time deliver to the Purchase Contract Agent for cancellation any Equity-Linked Securities previously executed, authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Equity-Linked Securities so delivered shall, upon an Issuer Order, be promptly cancelled by the Purchase Contract Agent; *provided, however*, that if the Equity-Linked Securities so delivered are Units, the Purchase Contract Agent shall deliver the Notes comprising such Units to the Trustee and Paying Agent (as defined in the Indenture) for disposition in accordance with the provisions of the Indenture. No Equity-Linked Securities shall be executed, authenticated on behalf of the Holder and delivered in lieu of or in exchange for any Equity-Linked Securities cancelled as provided in this Section, except as expressly permitted by this Agreement. All cancelled Equity-Linked Securities held by the Purchase Contract Agent shall be disposed of in accordance with its customary practices.

If the Company or any Affiliate of the Company shall acquire any Equity-Linked Security, such acquisition shall not operate as a cancellation of such Equity-Linked Security unless and until such Equity-Linked Security is delivered to the Purchase Contract Agent for cancellation, in which case such Equity-Linked Security shall be accompanied by an Issuer Order and cancelled in accordance with the immediately preceding paragraph.

ARTICLE IV
SETTLEMENT OF THE PURCHASE CONTRACTS

Section 4.01. Settlement Rate. (a) Each Purchase Contract obligates the Company to deliver, on the Mandatory Settlement Date, a number of shares of Common Stock (subject to Article 5) equal to the Settlement Rate as determined by the Company, unless such Purchase Contract has settled or been redeemed prior to the Mandatory Settlement Date.

(b) The “**Settlement Rate**” is equal to:

(i) if the Applicable Market Value is greater than the Threshold Appreciation Price, 4.0000 shares of Common Stock for each Purchase Contract (the “**Minimum Settlement Rate**”);

(ii) if the Applicable Market Value is greater than or equal to the Reference Price but less than or equal to the Threshold Appreciation Price, a number of shares of Common Stock for each Purchase Contract equal to the Stated Amount, *divided by* the Applicable Market Value; and

(iii) if the Applicable Market Value is less than the Reference Price, 4.8054 shares of Common Stock for each Purchase Contract (the “**Maximum Settlement Rate**”).

(c) The Maximum Settlement Rate and the Minimum Settlement Rate (each, a “**Fixed Settlement Rate**”) shall be subject to adjustment as provided in Article 5, and each Fixed Settlement Rate shall be rounded upward or downward to the nearest 1/10,000th of a share (or if there is not a nearest 1/10,000th of a share, to the next lower 1/10,000th of a share).

(d) The Company shall give notice of the Settlement Rate to the Purchase Contract Agent and Holders no later than the Scheduled Trading Day prior to the Mandatory Settlement Date.

Section 4.02. Representations and Agreements of Holders. Each Holder of an Equity-Linked Security, by its acceptance thereof:

(a) irrevocably authorizes and directs the Purchase Contract Agent to execute and deliver on its behalf and perform this Agreement on its behalf and appoints the Purchase Contract Agent as its attorney-in-fact for any and all such purposes;

(b) in the case of a Purchase Contract that is a component of a Unit, or that is evidenced by a Global Purchase Contract, irrevocably authorizes and directs the Purchase Contract Agent to execute, deliver and hold on its behalf the Global Purchase Contract or the Component Purchase Contract evidencing such Purchase Contract and appoints the Purchase Contract Agent its attorney-in-fact for any and all such purposes;

(c) consents to, and agrees to be bound by the terms and provisions hereof and thereof; and

(d) agrees to the tax treatment provided for in Section 11.07.

Section 4.03. Purchase Contract Settlement Fund. On the applicable Settlement Date, the Company shall issue and deliver to the Holders of the Outstanding Purchase Contracts (or, in the case of an Early Settlement, to the Holders of Purchase Contracts that have elected such Early Settlement) the aggregate number of shares of Common Stock to which such Holders of the Purchase Contracts to be settled or redeemed on such Settlement Date are entitled hereunder. When any shares of Common Stock are required to be delivered to Holders pursuant to this Article 4, the Company shall deliver such shares of Common Stock, together with any dividends or distributions for which a Record Date and payment date for such dividend or distribution have occurred as of or after the close of business on the applicable Determination Date (collectively, the “**Purchase Contract Settlement Fund**”) to such Holders, and the Company shall cause any such shares to be registered in the name of such Holder or such Holder’s designee pursuant to Section 4.11.

Section 4.04. Settlement Conditions. A Holder’s right to receive the shares of Common Stock, and any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund, upon settlement of any of its Purchase Contracts is subject to the following conditions:

(a) if such Purchase Contract or the Unit that includes such Purchase Contract is in the form of a Definitive Security, surrendering the relevant Definitive Security to the Purchase Contract Agent at the Corporate Trust Office duly endorsed for transfer to the Company or in blank and with duly completed settlement instructions in the form attached thereto, or if such Purchase Contract is represented by a Global Security, surrendering the relevant Security in compliance with the Depository’s applicable procedures; and

(b) the payment of any transfer or similar taxes payable pursuant to Section 4.11.

Section 4.05. Mandatory Settlement on the Mandatory Settlement Date. On the Mandatory Settlement Date, subject to satisfaction of the conditions set forth in Section 4.04 by a Holder with respect to any of its Purchase Contracts, the Company shall cause a number of shares of Common Stock per Purchase Contract equal to the Settlement Rate to be issued and delivered, together with payment of (i) any cash payable in lieu of fractional shares pursuant to Section 4.13 and (ii) any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund (but without any interest thereon), to such Holder by book-entry transfer or other appropriate procedures pursuant to Section 4.11. The Person in whose name any shares of Common Stock shall be issuable upon settlement of any Purchase Contract on the Mandatory Settlement Date shall be treated as the holder of record of such shares as of the close of business on the last Trading Day of the 20 consecutive Trading Day period during which the Applicable Market Value is determined.

Section 4.06. Early Settlement. (a) Subject to and upon compliance with the provisions of this Section 4.06, prior to the close of business on the second Scheduled Trading Day immediately preceding the Scheduled Mandatory Settlement Date, a Holder may elect to settle its Purchase Contracts early, in whole or in part, at the Early Settlement Rate (“**Early Settlement Right**”).

(b) A Holder's right to receive Common Stock upon Early Settlement of any of its Purchase Contracts is subject to the following conditions (in the case of Global Securities, subject to the applicable procedures of the Depositary):

(i) delivery of a written and signed notice of election (an "**Early Settlement Notice**") in the form attached to the Purchase Contract to the Purchase Contract Agent electing Early Settlement of such Purchase Contract; and

(ii) satisfaction of the conditions set forth in Section 4.04.

(c) If a Holder complies with the requirements set forth in Section 4.06(b) before the close of business on any Business Day, then that Business Day shall be considered the "**Early Settlement Date**." If a Holder complies with the requirements set forth in Section 4.06(b) at or after the close of business on any Business Day or at any time on a day that is not a Business Day, then the next succeeding Business Day shall be considered the "**Early Settlement Date**."

(d) Subject to satisfaction of the conditions set forth in Section 4.06(b) by a Holder with respect to any of its Purchase Contracts, the Company shall cause a number of shares of Common Stock per Purchase Contract equal to the Early Settlement Rate to be issued and delivered, together with payment of (i) any cash payable in lieu of fractional shares pursuant to Section 4.13 and (ii) any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund (but without any interest thereon), to such Holder by book-entry transfer or other appropriate procedures pursuant to Section 4.11 on the second Business Day following the Early Settlement Date. The Person in whose name any shares of the Common Stock shall be issuable upon such Early Settlement of a Purchase Contract shall be treated as the holder of record of such shares as of the close of business on the relevant Early Settlement Date.

(e) In the event that Early Settlement is effected with respect to Purchase Contracts that are a component of Units, upon such Early Settlement, the Company shall execute and the Trustee shall authenticate (pursuant to the Indenture) on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, Separate Notes, in same form as the Notes comprising part of the Units, equal to the number of Purchase Contracts as to which Early Settlement was effected.

(f) In the event that Early Settlement is effected with respect to Purchase Contracts represented by less than all the Purchase Contracts evidenced by a Security, upon such Early Settlement, the Company shall execute and the Purchase Contract Agent and Trustee shall authenticate on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, a Security evidencing the Purchase Contracts as to which Early Settlement was not effected.

(g) Upon receipt of any Early Settlement Notice pursuant to Section 4.06(b), the Purchase Contract Agent shall promptly deliver a copy of such Early Settlement Notice to the Company.

Section 4.07. **Early Settlement Upon a Fundamental Change.** (a) If a Fundamental Change occurs and a Holder exercises the option to effect Early Settlement in respect of its Purchase Contracts in connection with such Fundamental Change in accordance with the procedures set forth in Section 4.06, such Holder shall receive a number of shares of Common Stock (or cash, securities or other property, as applicable) for each such Purchase Contract equal to the Fundamental Change Early Settlement Rate on the date such Fundamental Change Early Settlement Right is exercised (the “**Fundamental Change Early Settlement Right**”). An Early Settlement shall be deemed for these purposes to be “in connection with” such Fundamental Change if the Holder delivers an Early Settlement Notice to the Purchase Contract Agent, and otherwise satisfies the requirements for effecting Early Settlement of its Purchase Contracts set forth in Section 4.06 hereof, during the period beginning on, and including, the Effective Date of the Fundamental Change and ending at the close of business on the 35th Business Day thereafter (or, if earlier, the second Scheduled Trading Day immediately preceding the Scheduled Mandatory Settlement Date) (the “**Fundamental Change Early Settlement Period**”).

(b) If a Holder complies with the requirements set forth in Section 4.07(a) and 4.06(b) to exercise the Fundamental Change Early Settlement Right before the close of business on any Business Day during the Fundamental Change Early Settlement Period, then that Business Day shall be considered the “**Fundamental Change Early Settlement Date**.” If a Holder complies with the requirements set forth in set forth in Section 4.07(a) and 4.06(b) to exercise the Fundamental Change Early Settlement Right at or after the close of business on any Business Day during the Fundamental Change Early Settlement Period or at any time on a day during the Fundamental Change Early Settlement Period that is not a Business Day, then the next succeeding Business Day shall be considered the “**Fundamental Change Early Settlement Date**.”

(c) The Company shall provide the Purchase Contract Agent, the Trustee and the Holders of Units and Separate Purchase Contracts with a notice of a Fundamental Change within five Business Days after its Effective Date and issue a press release announcing such Effective Date. The notice shall set forth (i) the applicable Fundamental Change Early Settlement Rate, (ii) if not Common Stock, the kind and amount of cash, securities and other property receivable by the Holder upon settlement, (iii) the deadline by which each Holder’s Fundamental Change Early Settlement Right must be exercised and (iv) any other information the Company determines to be appropriate.

(d) The “**Fundamental Change Early Settlement Rate**” shall be determined by the Company by reference to the table below, based on the date on which the Fundamental Change occurs or becomes effective (the “**Effective Date**”) and the stock price (the “**Stock Price**”) in the Fundamental Change, which shall be:

(i) in the case of a Fundamental Change described in clause (b) of the definition thereof in which all holders of shares of Common Stock receive only cash in the Fundamental Change, the Stock Price shall be the cash amount paid per share of Common Stock; and

(ii) in all other cases, the Stock Price shall be the arithmetic average of the Daily VWAPs of the Common Stock over the five consecutive Trading Day period ending on the Trading Day immediately preceding the Effective Date.

(e) The Stock Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Fixed Settlement Rates are adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Maximum Settlement Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Maximum Settlement Rate as so adjusted. The Fundamental Change Early Settlement Rates (and the Merger Termination Redemption Rates as described in Section 4.09) per Purchase Contract in the table below shall be adjusted in the same manner and at the same time as the Fixed Settlement Rates as set forth in Section 5.01.

(f) The following table sets forth the Fundamental Change Early Settlement Rate per Purchase Contract for each Stock Price and Effective Date set forth below:

Effective Date	Stock Price												
	\$5.00	\$10.00	\$15.00	\$17.50	\$20.81	\$23.00	\$25.00	\$27.50	\$30.00	\$35.00	\$40.00	\$50.00	\$60.00
January 11, 2019	4.7276	4.5951	4.3398	4.2244	4.1077	4.0529	4.0158	3.9833	3.9622	3.9411	3.9345	3.9347	3.9373
January 15, 2020	4.7571	4.6995	4.4766	4.3434	4.1938	4.1197	4.0690	4.0246	3.9961	3.9687	3.9601	3.9585	3.9595
January 15, 2021	4.7815	4.7754	4.6569	4.5204	4.3178	4.2044	4.1255	4.0589	4.0199	3.9884	3.9813	3.9800	3.9801
January 15, 2022	4.8054	4.8054	4.8054	4.8054	4.8054	4.3478	4.0000	4.0000	4.0000	4.0000	4.0000	4.0000	4.0000

The exact Stock Prices and Effective Dates may not be set forth in the table above, in which case:

(i) if the applicable Stock Price is between two Stock Prices in the table or the applicable Effective Date is between two Effective Dates in the table, the Fundamental Change Early Settlement Rate, or the Merger Termination Redemption Rate, as applicable, shall be determined by a straight-line interpolation between the Fundamental Change Early Settlement Rates or the Merger Termination Redemption Rates, as applicable, set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365- or 366-day year, as applicable;

(ii) if the applicable Stock Price is greater than \$60.00 per share (subject to adjustment in the same manner and at the same time as the Stock Prices set forth in the column headings of the table above), the Fundamental Change Early Settlement Rate or the Merger Termination Redemption Rate, as applicable, shall be the Minimum Settlement Rate; or

(iii) if the applicable Stock Price is less than \$5.00 per share (subject to adjustment in the same manner and at the same time as the Stock Prices set forth in the column headings of the table above, the “**Minimum Stock Price**”) the Fundamental Change Early Settlement Rate or the Merger Termination Redemption Rate, as applicable, shall be determined as if the Stock Price equaled the Minimum Stock Price, and using straight-line interpolation, as described in clause (i) of this Section 4.07(f), if the Effective Date is between two Effective Dates in the table.

The maximum number of shares of Common Stock deliverable under a Purchase Contract is 4.8054, subject to adjustment in the same manner and at the same time as the Fixed Settlement Rates as set forth under Section 5.01.

(g) *[Reserved.]*

(h) Subject to satisfaction of the conditions set forth in Section 4.06(b) by a Holder with respect to any of its Purchase Contracts, the Company shall cause to be delivered a number of shares of Common Stock, or securities, cash or other property, as applicable, payable as a result of such Holder's exercise of the Fundamental Change Early Settlement Right in accordance with the provisions set forth in Section 4.06(d), except that (i) such delivery shall be made on the second Business Day following the Fundamental Change Early Settlement Date, and (ii) the Person in whose name any shares of Common Stock or other securities, if applicable, shall be issuable following exercise of a Holder's Fundamental Change Early Settlement Right shall be treated as the holder of record of such shares or other securities, if applicable, as of the close of business on the Fundamental Change Early Settlement Date.

(i) If a Holder exercises its Fundamental Change Early Settlement Right with respect to Purchase Contracts that are a component of Units, upon such Early Settlement in connection with a Fundamental Change, the Company shall execute and the Trustee shall authenticate (pursuant to the Indenture) on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, Separate Notes, in same form as the Notes comprising part of the Units, equal to the number of Purchase Contracts as to which Early Settlement in connection with a Fundamental Change was effected.

(j) If a Holder exercises its Fundamental Change Early Settlement Right with respect to Purchase Contracts represented by less than all the Purchase Contracts evidenced by a Security, upon such Early Settlement in connection with a Fundamental Change, the Company shall execute and the Purchase Contract Agent and Trustee shall authenticate on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, a Security evidencing the Purchase Contracts as to which Early Settlement in connection with a Fundamental Change was not effected.

(k) If a Holder does not elect to exercise the Fundamental Change Early Settlement Right, such Holder's Purchase Contracts shall remain outstanding and shall be subject to normal settlement on any subsequent Settlement Date, including, if applicable, the provisions set forth in Section 5.01.

Section 4.08. *[Reserved.]*

Section 4.09. Merger Termination Redemption. (a) If the closing of the Merger has not occurred on or prior to May 19, 2019, the Company may elect to redeem all, but not less than all, of the Outstanding Purchase Contracts, on the terms described in this Section 4.09, by delivering notice during the five Business Days immediately following May 19, 2019 in the manner specified in Section 4.09(b). If the Merger Agreement is terminated prior to May 19, 2019, the Company may elect to redeem all, but not less than all, of the Outstanding Purchase Contracts on

the terms described in this Section 4.09, by delivering notice on or prior to the 40th Scheduled Trading Day immediately preceding May 19, 2019 or during the five Business Days immediately following May 19, 2019 in the manner specified in Section 4.09(b) (any notice sent under this sentence or the immediately preceding sentence, a “**Merger Termination Redemption Notice**,” and a redemption under this sentence or the immediately preceding sentence, a “**Merger Termination Redemption**”).

(b) In the event of a Merger Termination Redemption, the Company shall provide the Purchase Contract Agent, the Trustee and the Holders of Units, Separate Purchase Contracts and Separate Notes with the Merger Termination Redemption Notice and issue a press release announcing its election. The Merger Termination Redemption Notice shall specify:

- (i) the Merger Termination Redemption Stock Price;
- (ii) the Scheduled Merger Termination Redemption Settlement Date;
- (iii) if the Redemption Amount will be determined pursuant to Section 4.09(c)(i), the cash Redemption Amount;
- (iv) if the Redemption Amount will be determined pursuant to Section 4.09(c)(ii), the Merger Termination Redemption Rate, and, if applicable, the number of shares of Common Stock that would otherwise be included in the applicable Redemption Amount that will be replaced with cash;
- (v) that Holders of Units and Separate Notes will have the right to require the Company to repurchase their Notes that are a component of the Units or their Separate Notes, as the case may be, pursuant to and in accordance with the Indenture;
- (vi) the Repurchase Price and Repurchase Date;
- (vii) the last date on which Holders of Units or Separate Notes may exercise their Repurchase Right;
- (viii) the procedures that Holders of Units or Separate Notes must follow hereunder and under the Indenture to require the Company to repurchase their Notes;
- (ix) if any outstanding Securities are Definitive Securities, the name and address of the Purchase Contract Agent; and
- (x) any other information the Company determines to be appropriate.

In the event the Redemption Amount is determined pursuant to Section 4.09(c)(ii), if the Company does not specify a number of shares of Common Stock that will be replaced with cash in the Merger Termination Redemption Notice, the Company shall be deemed to have elected to settle the Redemption Amount solely in shares of Common Stock.

(c) In the event of a Merger Termination Redemption, the Company shall deliver the applicable Redemption Amount on the Merger Termination Redemption Settlement Date. The “**Redemption Amount**” shall mean:

(i) if the Merger Termination Redemption Stock Price is equal to or less than the Reference Price, an amount of cash per Purchase Contract equal to (x) the Stated Amount *less* (y) the applicable Repurchase Price; or

(ii) if the Merger Termination Redemption Stock Price is greater than the Reference Price, a number of shares of Common Stock per Purchase Contract equal to the Merger Termination Redemption Rate; *provided* that the Company may elect to pay cash in lieu of delivering any or all of such shares of Common Stock in an amount equal to the Merger Termination Redemption Rate *multiplied by* the Merger Termination Redemption Market Value.

The Company shall cause any shares referred to in clause (ii) above to be issued and delivered, together with payment of (a) any cash payable in lieu of fractional shares pursuant to Section 4.13 and (b) any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund (but without any interest thereon), to the applicable Holder by book-entry transfer or other appropriate procedures pursuant to Section 4.11. The Person in whose name any shares of the Common Stock shall be issuable pursuant to a Merger Termination Redemption shall be treated as the holder of record of such shares as of the close of business on:

(i) the date of the Merger Termination Redemption Notice, if the Company has elected (or is deemed to have elected) to settle the Redemption Amount solely in shares of Common Stock; or

(ii) the last Trading Day in the 20 consecutive Trading Day period used to determine the Merger Termination Redemption Market Value, if the Company has elected to pay cash in lieu of delivering a portion of any shares of Common Stock that would otherwise be included in the Redemption Amount.

(d) The table set forth in Section 4.07(f) shall be used to determine the “**Merger Termination Redemption Rate**” per Purchase Contract for each Merger Termination Redemption Stock Price, with references to “Stock Price” deemed to refer to “Merger Termination Redemption Stock Price,” references to “Fundamental Change Early Settlement Rate” deemed to refer to “Merger Termination Redemption Rate,” and references to “Effective Date” deemed to refer to the date of the related Merger Termination Redemption Notice.

(e) In the event of a Merger Termination Redemption with respect to Purchase Contracts that are a component of Units, upon the applicable Merger Termination Redemption Settlement Date, the Company shall execute and the Trustee shall authenticate (pursuant to the Indenture) on behalf of the Holder and deliver to the Holder thereof, at the expense of the Company, Separate Notes in the same form and in the same number as the Notes comprising part of the Units; *provided, however*, that if the Repurchase Date occurs prior to the Merger

Termination Redemption Settlement Date, any Holder exercising the Repurchase Right shall surrender the Units on the Repurchase Date and the Company shall execute, and the Purchase Contract Agent shall authenticate, Separate Purchase Contracts in the same form and in the same number as the Purchase Contracts comprising part of the Units, such Separate Purchase Contracts to be redeemed on the Merger Termination Redemption Settlement Date.

Section 4.10. Acceleration of Mandatory Settlement Date. If a Bankruptcy Event occurs at any time on or before the last Trading Day of the 20 consecutive Trading Day period during which the Applicable Market Value is determined (the day on which such Bankruptcy Event occurs, the “**Acceleration Date**”), the Mandatory Settlement Date shall automatically be accelerated to the Business Day immediately following the Acceleration Date and Holders of Purchase Contracts shall be entitled to receive, upon settlement of the Purchase Contracts on such accelerated Mandatory Settlement Date, a number of shares of Common Stock per Purchase Contract equal to the Maximum Settlement Rate in effect immediately prior to the Acceleration Date (regardless of the Applicable Market Value of the Common Stock at that time). The Company shall cause to be delivered the shares of Common Stock, securities, cash or other property deliverable as a result of any such acceleration of the Mandatory Settlement Date in accordance with the provisions set forth in Section 4.05, except that (i) such delivery shall be made on the accelerated Mandatory Settlement Date, and (ii) the Person in whose name any shares of Common Stock shall be issuable following such acceleration shall be treated as the holder of record of such shares as of the close of business on the Acceleration Date. Any claim for damages that Holders of the Purchase Contracts (whether as Separate Purchase Contracts or Purchase Contracts underlying Units) have for the Company’s failure to deliver Common Stock following a Bankruptcy Event as described in this Section 4.10 will rank *pari passu* with the claims of holders of the Common Stock in the relevant bankruptcy proceeding.

Section 4.11. Registration of Underlying Shares and Transfer Taxes. The shares of Common Stock underlying the Purchase Contracts shall be registered in the name of the Holder or the Holder’s designee as specified in the settlement instructions provided by the Holder to the Purchase Contract Agent, and the Company will pay all documentary, stamp or similar issue or transfer taxes attributable to the delivery thereof, unless any such tax is payable in respect of any registration of such shares in a name of a Person other than the Person in whose name the Security evidencing such Purchase Contract is registered, in which case the Company shall not be required to pay any such tax and no such registration shall be made unless the Person requesting such registration has paid any such taxes required by reason of such registration in a name of a Person other than the Person in whose name the Security evidencing such Purchase Contract is registered or has established to the satisfaction of the Company that such tax either has been paid or is not payable.

Section 4.12. Return of Purchase Contract Settlement Fund. In the event a Holder fails to effect surrender or delivery of its Units or Purchase Contracts on or following the applicable Settlement Date in accordance with the provisions hereof, the shares of Common Stock underlying such Purchase Contracts, and any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund, shall be held in the name of the Purchase Contract Agent or its nominee in trust for the benefit of such Holder, until the earlier to occur of:

(i) the surrender of the relevant Units or Separate Purchase Contracts for settlement or redemption in accordance with the provisions hereof or receipt by the Company and the Purchase Contract Agent from such Holder of satisfactory evidence that such Units or Separate Purchase Contracts have been destroyed, lost or stolen, together with any indemnity that may be required by the Purchase Contract Agent and the Company; and

(ii) the passage of two years from the applicable Settlement Date, as the case may be, following which the Purchase Contract Agent shall pay to the Company such Holder's share of such Common Stock and any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund; *provided, however*, that prior to receiving any such payment, the Company shall notify each such Holder that such property remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notice, any unclaimed balance of such property then remaining will be repaid to the Company. After payment to the Company, (A) Holders entitled to such property must look to the Company for payment as general creditors, unless applicable abandoned property law designates another Person, and (B) all liability of the Purchase Contract Agent with respect to such property shall cease.

Section 4.13. No Fractional Shares. No fractional shares or scrip certificates representing fractional shares of Common Stock shall be issued or delivered to Holders upon settlement or redemption of the Purchase Contracts. In lieu of any fractional shares of Common Stock that would otherwise be issuable upon settlement or redemption of any Purchase Contracts, a Holder of a Purchase Contract shall be entitled to receive an amount in cash equal to the fraction of a share of Common Stock, calculated on an aggregate basis in respect of the Purchase Contracts being settled or redeemed (provided that, so long as the Units are held as Global Units, the Company may elect to aggregate Units for purposes of these calculations on any basis permitted by the applicable procedures of the Depositary), *multiplied by* the Daily VWAP of the Common Stock on the Trading Day immediately preceding the applicable Settlement Date. To the extent the Purchase Contract Agent is obligated to make any payments on behalf of the Company pursuant to this Agreement, the Company shall provide the Purchase Contract Agent with sufficient funds to permit the Purchase Contract Agent to make all such cash payments in a timely manner.

ARTICLE V ADJUSTMENTS

Section 5.01. Adjustments to the Fixed Settlement Rates. (a) Each Fixed Settlement Rate shall be subject to adjustment, without duplication, upon:

(i) *Stock Dividends and Distributions*. The issuance of Common Stock as a dividend or distribution to all or substantially all of the holders of Common Stock, or a subdivision or combination of Common Stock, in which event each Fixed Settlement Rate shall be adjusted based on the following formula:

$$SR_1 = SR_0 \times \frac{OS_1}{OS_0}$$

where,

- SR₀ = the Fixed Settlement Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution or immediately prior to the open of business on the Effective Date for such subdivision or combination, as the case may be;
- SR₁ = the Fixed Settlement Rate in effect immediately after the close of business on such Record Date or immediately after the open of business on such Effective Date, as the case may be;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the close of business on such Record Date or immediately prior to the open of business on such Effective Date, as the case may be (in either case, prior to giving effect to such event); and
- OS₁ = the number of shares of Common Stock that would be outstanding immediately after, and solely as a result of, such dividend, distribution, subdivision or combination.

Any adjustment made pursuant to this clause (i) will become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share subdivision or share combination, as the case may be. If any dividend or distribution of the type described in this clause (i) is declared but not so paid or made, each Fixed Settlement Rate shall be immediately readjusted, effective as of the date the Board of Directors publicly announces its decision not to pay or make such dividend or distribution, to such Fixed Settlement Rate that would then be in effect if such dividend or distribution had not been declared. For the purposes of this clause (i), the number of shares of Common Stock outstanding immediately prior to the close of business on the Record Date for such dividend or distribution or the open of business on the Effective Date for such share subdivision or share combination, as applicable, shall not include shares held in treasury by the Company but shall include any shares issuable in respect of any scrip certificates issued in lieu of fractions of shares of Common Stock. The Company shall not pay any dividend or make any distribution on shares of Common Stock held in treasury by the Company.

(ii) *Issuance of Stock Purchase Rights*. The issuance to all or substantially all holders of Common Stock of rights, options or warrants entitling such holders for a period expiring 45 calendar days or less from the date of issuance of such rights, options or warrants, to subscribe for or purchase shares of Common Stock at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement for such distribution per share of Common Stock, in which event each Fixed Settlement Rate shall be adjusted based on the following formula:

$$SR_1 = SR_0 \times \frac{(OS_0 + X)}{(OS_0 + Y)}$$

where,

- SR₀ = the Fixed Settlement Rate in effect immediately prior to close of business on the Record Date for such issuance;
- SR₁ = the Fixed Settlement Rate in effect immediately after the close of business on such Record Date;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the close of business on such Record Date;
- X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
- Y = the total number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, *divided by* the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement for such distribution per share of Common Stock.

Any adjustment made pursuant to this clause (ii) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the close of business on the Record Date for such issuance. In the event that such rights, options or warrants described in this clause (ii) are not so issued, each Fixed Settlement Rate shall be immediately readjusted, effective as of the date the Board of Directors publicly announces its decision not to issue such rights, options or warrants, to such Fixed Settlement Rate that would then be in effect if such issuance had not been declared. To the extent that such rights, options or warrants are not exercised prior to their expiration or shares of Common Stock are otherwise not delivered pursuant to such rights, options or warrants upon the exercise of such rights, options or warrants, each Fixed Settlement Rate shall be immediately readjusted, effective as of the date of such expiration or the date of such exercise, as the case may be, to such Fixed Settlement Rate that would then be in effect had the adjustment with respect to the issuance of such rights, options or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered.

In determining whether any rights, options or warrants entitle the Holders of Common Stock to subscribe for or purchase shares of Common Stock at less than such average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement for such distribution per share of Common Stock, and in determining the aggregate price payable to exercise such rights, options or warrants, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

For the purposes of this clause (ii), the number of shares of Common Stock at the time outstanding shall not include shares held in treasury by the Company but shall include any shares issuable in respect of any scrip certificates issued in lieu of fractions of shares of Common Stock. The Company shall not issue any such rights, warrants or options in respect of shares of Common Stock held in treasury by the Company.

(iii) *Debt or Asset Distribution.* (A) The dividend or other distribution to all or substantially all holders of Common Stock of shares of the Company's Capital Stock (other than Common Stock), evidences of the Company's indebtedness, assets or rights, options, or warrants to acquire the Company's Capital Stock, indebtedness or assets, excluding

- (1) any dividend or distribution as to which an adjustment was effected pursuant to Section 5.01(a)(i), Section 5.01(a)(ii) or Section 5.01(a)(iv); or
- (2) any dividend or distribution in connection with a Spin-Off covered by this Section 5.01(a)(iii) relating to Spin-Offs; and
- (3) any securities, cash or other property that is distributed in, and will constitute Exchange Property as a result of, a Reorganization Event,

in which event each Fixed Settlement Rate shall be adjusted based on the following formula:

$$SR_1 = SR_0 \times \frac{SP_0}{(SP_0 - FMV)}$$

where,

- SR₀ = the Fixed Settlement Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution;
- SR₁ = the Fixed Settlement Rate in effect immediately after the close of business on such Record Date;
- SP₀ = the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding such Ex-Date for such dividend or distribution; and
- FMV = the Fair Market Value (as determined by the Board of Directors), on the Ex-Date for such dividend or distribution, of the shares of Capital Stock, evidences of indebtedness, assets or rights, options or warrants so distributed, expressed as an amount per share of Common Stock.

If FMV (as defined above) is equal to or greater than SP₀ (as defined above) or if the difference between SP₀ and FMV is less than \$1.00, in lieu of the foregoing adjustment,

provision shall be made for each Holder of a Unit or Separate Purchase Contract to receive, for each Unit or Separate Purchase Contract, at the same time and upon the same terms as holders of Common Stock, the kind and amount of Capital Stock, evidences of indebtedness, assets or rights, options or warrants that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Maximum Settlement Rate in effect on the Record Date for the dividend or distribution.

Any adjustment made pursuant to subparagraph (A) of clause (iii) above shall become effective immediately after the close of business on the Record Date for such dividend or distribution. In the event that such dividend or distribution is not so paid or made, each Fixed Settlement Rate shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to pay or make such dividend or distribution, to such Fixed Settlement Rate that would then be in effect if such dividend or distribution had not been declared.

If the transaction that gives rise to an adjustment pursuant to this Section 5.01(a)(iii) is a Spin-Off, then each Fixed Settlement Rate shall instead be adjusted based on the following formula:

$$SR_1 = SR_0 \times \frac{(FMV_0 + MP_0)}{MP_0}$$

where,

- SR₀ = the Fixed Settlement Rate in effect immediately prior to the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the effective date for the Spin-Off;
- SR₁ = the Fixed Settlement Rate in effect immediately after the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the effective date for the Spin-Off;
- FMV₀ = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interests distributed to holders of Common Stock applicable to one share of Common Stock for the 10 consecutive Trading Day period commencing on, and including, the effective date for the Spin-Off; and
- MP₀ = the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period commencing on, and including, the effective date for the Spin-Off.

Any adjustment made pursuant to this portion of clause (iii) will become effective immediately after the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the effective date for the Spin-Off; *provided* that if any date for determining the number of shares of Common Stock issuable to a Holder occurs during the 10 consecutive Trading Day period commencing on, and including, the effective date

for the Spin-Off, references in the preceding paragraph to 10 consecutive Trading Days shall be deemed to be replaced with such lesser number of consecutive Trading Days as have elapsed between the beginning of the 10 consecutive Trading Day period and such determination date for purposes of determining the Fixed Settlement Rates. In the event that such distribution described in this clause (iii) is not so made, each Fixed Settlement Rate will be readjusted, effective as of the date the Board of Directors publicly announces its decision not to pay such distribution, to such Fixed Settlement Rate that would then be in effect if such distribution had not been declared.

(iv) *Cash Distributions*. The dividend or distribution to all or substantially all holders of Common Stock of exclusively cash, excluding:

- (1) any cash that is distributed in, and will constitute Exchange Property as a result of, a Reorganization Event (as described below); or
- (2) any dividend or distribution in connection with the liquidation, dissolution or winding up of the Company,

in which event, each Fixed Settlement Rate shall be adjusted based on the following formula:

$$SR_1 = SR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

SR₀ = the Fixed Settlement Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution;

SR₁ = the Fixed Settlement Rate in effect immediately after the close of business on the Record Date for such dividend or distribution;

SP₀ = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Date for such distribution; and

C = the amount in cash per share the Company distributes to holders of Common Stock.

If C (as defined above) is equal to or greater than SP₀ (as defined above) or if the difference between SP₀ and C is less than \$1.00, in lieu of the foregoing adjustment, provision shall be made for each Holder of a Unit or Separate Purchase Contract to receive, for each Unit or Separate Purchase Contract, at the same time and upon the same terms as holders of Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Maximum Settlement Rate on the Record Date for such cash dividend or distribution.

Any adjustment made pursuant to this clause (iv) shall become effective immediately after the close of business on the Record Date for such dividend or distribution. In the event that any dividend or distribution described in this clause (iv) is not so made, each Fixed Settlement Rate shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to pay such dividend or distribution, to such Fixed Settlement Rate which would then be in effect if such dividend or distribution had not been declared.

(v) *Self Tender Offers and Exchange Offers*. The Company or one or more Subsidiaries of the Company makes purchases of Common Stock pursuant to a tender offer or exchange offer by the Company or one of its Subsidiaries for Common Stock if the amount of cash and value of any other consideration included in the payment per share of Common Stock validly tendered or exchanged exceeds the average of the Last Reported Sale Prices per share of the Common Stock for the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender offer or exchange offer (the “**Tender Offer Expiration Date**”), in which event each Fixed Settlement Rate shall be adjusted based on the following formula:

$$SR_1 = SR_0 \times \frac{(FMV + (SP_1 \times OS_1))}{(SP_1 \times OS_0)}$$

where,

- SR₀ = the Fixed Settlement Rate in effect immediately prior to the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Tender Offer Expiration Date;
- SR₁ = the Fixed Settlement Rate in effect immediately after the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Tender Offer Expiration Date;
- FMV = the Fair Market Value (as determined by the Board of Directors) of the aggregate value of all cash and any other consideration paid or payable for shares purchased in such tender offer or exchange offer (the “*purchased shares*”);
- OS₁ = the number of shares of Common Stock outstanding immediately after the last time tenders or exchanges may be made pursuant to such tender offer or exchange offer on the Tender Offer Expiration Date (the “*expiration time*”) (after giving effect to such tender offer or exchange offer);
- OS₀ = the number of shares of common stock outstanding immediately prior to the expiration time (prior to giving effect to such tender offer or exchange offer); and
- SP₁ = the average of the Last Reported Sale Prices of the common stock for the 10 consecutive trading day period commencing on, and including, the trading day next succeeding the Tender Offer Expiration Date.

Any adjustment made pursuant to this clause (v) will become effective immediately after the close of business on the last day of the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Tender Offer Expiration Date; *provided* that if any date for determining the number of shares of the Common Stock issuable to a Holder occurs during the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Tender Offer Expiration Date, references in the preceding paragraph to 10 consecutive Trading Days shall be deemed to be replaced with such lesser number of consecutive Trading Days as have elapsed between such Tender Offer Expiration Date and such determination date for purposes of determining the Fixed Settlement Rates.

If the Company or one of its Subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then each Fixed Settlement Rate shall be readjusted to be such Fixed Settlement Rate that would then be in effect if such tender offer or exchange offer had not been made.

(b) *[Reserved]*.

(c) *Rights Plans*. To the extent that the Company has a rights plan in effect with respect to the Common Stock on any Determination Date, Holders shall receive, in addition to the Common Stock, the rights under such rights plan, unless, prior to such Determination Date, the rights have separated from the Common Stock, in which case each Fixed Settlement Rate shall be adjusted at the time of separation of such rights as if the Company made a distribution to all holders of the Common Stock as described in Section 5.01(a)(iii), subject to readjustment in the event of the expiration, termination or redemption of such rights.

(d) *Discretionary Adjustments*. Subject to applicable law and the applicable listing standards of the NYSE (or any other securities exchange where the Common Stock is listed in accordance with the provisions of the Purchase Contract Agreement), the Company may make such increases in each Fixed Settlement Rate, in addition to any other increases required by this Article 5, as the Company determines to be in its best interests or the Company deems advisable to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of shares of Common Stock (or issuance of rights, options or warrants to acquire shares of Common Stock) or from any event treated as such for income tax purposes or for any other reason; *provided* that, in each case, the same proportionate adjustment must be made to each Fixed Settlement Rate.

(e) *Calculation of Adjustments*. All adjustments to each Fixed Settlement Rate shall be calculated to the nearest 1/10,000th of a share of Common Stock. No adjustment in a Fixed Settlement Rate shall be required unless such adjustment would require an increase or decrease of at least one percent therein. If any adjustment is not required to be made by reason

of this Section 5.01(e), then such adjustment shall be carried forward and taken into account in any subsequent adjustment; *provided* that on each Determination Date (including any date for determining the amount of cash payable in connection with a Merger Termination Redemption), adjustments to each Fixed Settlement Rate shall be made with respect to any such adjustment carried forward and which has not been taken into account before such Determination Date.

(f) *Adjustments to Prices Over a Period.* Whenever the Company is required to calculate the Last Reported Sale Prices, the Daily VWAPs or any other prices or amounts over a span of multiple days (including, without limitation, the Applicable Market Value, the Merger Termination Redemption Market Value, the Stock Price or the Merger Termination Redemption Stock Price), the Board of Directors shall make appropriate adjustments, if any, to each to account for any adjustment to the Fixed Settlement Rates if the related Record Date, Ex-Date, effective date or Tender Offer Expiration Date occurs during the period in which the Last Reported Sale Prices, the Daily VWAPs or such other prices or amounts are to be calculated.

(g) *Limitation on Adjustments.* No adjustment to the Fixed Settlement Rates shall be made if Holders of Units or any separate Purchase Contracts participate (other than in the case of (x) a share split or share combination or (y) a tender or exchange offer), at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Purchase Contracts, in the transaction that would otherwise give rise to an adjustment without having to settle the Purchase Contracts as if such Holder held a number of shares of the Common Stock equal to the Maximum Settlement Rate, *multiplied by* the number of Purchase Contracts held by such Holder. In addition, the Fixed Settlement Rates shall only be adjusted as set forth above and shall not be adjusted:

(A) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(B) upon the issuance of any shares of Common Stock or rights, options or warrants to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of its Subsidiaries;

(C) upon the repurchase of any shares of Common Stock pursuant to an open market share repurchase program or other buyback transaction that is not a tender offer or exchange offer described in clause 5.01(a)(v) hereof;

(D) for the sale or issuance of shares of Common Stock, or securities convertible into or exercisable for shares of Common Stock, for cash, including at a price per share less than the Fair Market Value thereof or otherwise or in an acquisition, except as described in Sections 5.01(a)(i) through (v) hereof;

(E) for a third-party tender offer;

(F) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the Issue Date; or

(G) solely for a change in, or elimination of, the par value of the Common Stock.

(h) *Notice of Adjustment.* Whenever the Fixed Settlement Rates are adjusted, the Company shall:

(i) prepare and transmit to the Purchase Contract Agent an Officer's Certificate setting forth such adjusted Fixed Settlement Rates and/or the adjusted Fundamental Change Settlement Rates and the adjusted Merger Termination Redemption Rates, the method of calculation thereof in reasonable detail and the facts requiring such adjustment and upon which such adjustment is based;

(ii) within five Business Days following the occurrence of an event that requires an adjustment to the Fixed Settlement Rates, the Fundamental Change Settlement Rates and/or the adjusted Merger Termination Redemption Rates (or if the Company is not aware of such occurrence, as soon as practicable after becoming so aware), provide, or cause to be provided, a written notice to the Holders of the occurrence of such event; and

(iii) within five Business Days following the determination of such adjusted Fixed Settlement Rates, Fundamental Change Settlement Rates and/or the adjusted Merger Termination Redemption Rates provide, or cause to be provided, to the Holders a statement setting forth in reasonable detail the method by which the adjustment to such Fixed Settlement Rates, the Fundamental Change Settlement Rates and/or the adjusted Merger Termination Redemption Rates was determined and setting forth such adjusted Fixed Settlement Rates, Fundamental Change Settlement Rates and/or the adjusted Merger Termination Redemption Rates and the facts requiring such adjustment and upon which such adjustment is based.

(iv) Each adjustment to each Fixed Settlement Rate pursuant to this Section 5.01 will result in a corresponding adjustment to the Early Settlement Rate.

Section 5.02. Reorganization Events. (a) In the event of:

(i) any consolidation or merger of the Company with or into another Person (other than a merger or consolidation in which the Company is the continuing or surviving corporation and in which the Common Stock outstanding immediately prior to the merger or consolidation is not exchanged for cash, securities or other property of the Company or another Person);

(ii) any sale, transfer, lease or conveyance to another Person of all or substantially all of the property and assets of the Company;

- (iii) any reclassification of Common Stock into securities, including securities other than Common Stock; or
- (iv) any statutory exchange of securities of the Company with another Person (other than in connection with a merger or acquisition);

in each case, as a result of which the Common Stock would be converted into, or exchanged for, securities, cash or other property (each, a “**Reorganization Event**”), each Purchase Contract outstanding immediately prior to such Reorganization Event shall, without the consent of Holders, become a contract to purchase the kind of securities, cash and/or other property (the “**Exchange Property**”) that a holder of Common Stock would have been entitled to receive immediately prior to such Reorganization Event and, prior to or at the effective time of such Reorganization Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Purchase Contract Agent and the Trustee a supplemental agreement permitted under Section 9.01(iv) amending this Agreement and the Purchase Contracts to provide for such change in the right to settle the Purchase Contracts. For purposes of the foregoing, the type and amount of Exchange Property in the case of any Reorganization Event that causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of shareholder election) will be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of Common Stock. The Company shall notify the Purchase Contract Agent in writing of such weighted average as soon as practicable after such determination is made. The number of units of Exchange Property the Company shall deliver for each Purchase Contract settled or redeemed (if the Company elects not to deliver solely cash in respect of a Merger Termination Redemption) following the effective date of such Reorganization Event shall be equal to the number of shares of Common Stock that the Company would otherwise be required to deliver as determined based on the Fixed Settlement Rates then in effect on the applicable Determination Date, or such other settlement rates or redemption rates as provided herein (without any interest thereon and without any right to dividends or distributions thereon which have a record date that is prior to the close of business on the Determination Date). Each Fixed Settlement Rate shall be determined based upon the Applicable Market Value of a unit of Exchange Property that a holder of one share of Common Stock would have received in such Reorganization Event.

For purposes of this Section 5.02(a), “**Applicable Market Value**” shall be deemed to refer to the Applicable Market Value of the Exchange Property and such value shall be determined (A) in the case of any publicly traded securities that comprise all or part of the Exchange Property, based on the Daily VWAP of such securities, as determined by the Company in a commercially reasonable manner and in good faith (B) in the case of any cash that comprises all or part of the Exchange Property, based on the amount of such cash and (C) in the case of any other property that comprises all or part of the Exchange Property, based on the value of such property, as determined by a nationally recognized independent investment banking firm retained by the Company for this purpose. For purposes of this Section 5.02(a), the term “**Daily VWAP**” shall be determined by reference to the definition of Daily VWAP as if references therein to Common Stock were to such publicly traded securities that comprise all or part of the Exchange Property. For purposes of this Section 5.02(a), references to Common Stock in the definition of “**Trading Day**” shall be replaced by references to any publicly traded securities that comprise all or part of the Exchange Property.

If the Exchange Property in respect of any Reorganization Event includes, in whole or in part, securities of another Person, such supplemental agreement described in the second immediately preceding paragraph shall be executed by such other Person and shall (x) provide for anti-dilution and other adjustments that shall be as nearly equivalent as practicable, as determined by the officer of the Company executing such supplemental agreement, to the adjustments provided for in this Article 5, and (y) otherwise modify the terms of this Agreement and the Purchase Contracts to reflect the substitution of the applicable Exchange Property for the Common Stock (or other Exchange Property then underlying the Purchase Contracts). In establishing such anti-dilution and other adjustments referenced in the immediately preceding sentence, such officer shall act in a commercially reasonable manner and in good faith.

(b) In the event the Company shall execute a supplemental agreement pursuant to Section 5.02(a), the Company shall promptly file with the Purchase Contract Agent an Officer's Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise the Exchange Property after any such Reorganization Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly notify Holders thereof. The Company (or any successor) shall, within 20 days of the occurrence of any Reorganization Event or, if earlier, within 20 days of the execution of any supplemental agreement pursuant to Section 5.02(a), provide written notice to the Purchase Contract Agent and Holders of such occurrence of such event and of the kind and amount of the cash, securities or other property that constitute the Exchange Property and of the execution of such supplemental agreement, if applicable. Failure to deliver such notice shall not affect the operation of this Section 5.02 or the legality or validity of any such supplemental agreement.

(c) The Company shall not become a party to any Reorganization Event unless its terms are consistent with this Section 5.02. None of the foregoing provisions shall affect the right of a Holder of Purchase Contracts to effect Early Settlement pursuant to Section 4.06 and Section 4.07 prior to the effective date of such Reorganization Event.

(d) The above provisions of this Section 5.02 shall similarly apply to successive Reorganization Events and the provisions of Section 5.01 shall apply to any shares of Capital Stock of the Company (or any successor) received by the holders of Common Stock in any such Reorganization Event.

ARTICLE VI CONCERNING THE HOLDERS OF PURCHASE CONTRACTS

Section 6.01. Evidence of Action Taken by Holders. Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Agreement to be given or taken by a specified percentage of number of Purchase Contracts may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such specified percentage of Holders 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 Purchase Contract Agent. Proof of execution of any instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Agreement and (subject to Section 8.01 and Section 8.03) conclusive in favor of the Purchase Contract Agent and the Company, if made in the manner provided in this Article 6.

Section 6.02. Proof of Execution of Instruments and of Holding of Securities. Subject to Section 8.01 and Section 8.03, the execution of any instrument by a Holder or his agent or proxy may be proved in the following manner:

(a) The fact and date of the execution by any Holder of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction authorized to take acknowledgments of deeds or administer oaths that the Person executing such instruments acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute sufficient proof of the authority of the Person executing the same.

(b) The ownership of the Units and the Purchase Contracts shall be proved by the Security Register or by a certificate of the Security Registrar.

Section 6.03. Purchase Contracts Deemed Not Outstanding. In determining whether the Holders of the requisite number of Outstanding Purchase Contracts have concurred in any direction, consent or waiver under this Agreement, Purchase Contracts which are owned by the Company or by any Affiliate of the Company with respect to which such determination is being made shall be disregarded and deemed not to be Outstanding Purchase Contracts for the purpose of any such determination, except that for the purpose of determining whether the Purchase Contract Agent shall be protected in relying on any such direction, consent or waiver only Purchase Contracts which a Responsible Officer of the Purchase Contract Agent knows are so owned shall be so disregarded. Purchase Contracts so owned which have been pledged in good faith may be regarded as Outstanding Purchase Contracts if the pledgee establishes to the satisfaction of the Purchase Contract Agent the pledgee's right so to act with respect to such Purchase Contracts and that the pledgee is not the Company or any Affiliate of the Company. In case of a dispute as to such right, the advice of counsel shall be fully protected in respect of any decision made by the Purchase Contract Agent in accordance with such advice. Upon request of the Purchase Contract Agent, the Company shall furnish to the Purchase Contract Agent promptly an Officer's Certificate listing and identifying all Purchase Contracts, 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 Section 8.01 and Section 8.03, the Purchase Contract Agent shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Purchase Contracts not listed therein are Outstanding Purchase Contracts for the purpose of any such determination.

Section 6.04. Right of Revocation of Action Taken. At any time prior to (but not after) the evidencing to the Purchase Contract Agent, as provided in Section 6.01, of the taking of any action by the Holders of the percentage of the number of Purchase Contracts specified in this Agreement in connection with such action, any Holder of a Purchase Contract the serial number of which is shown by the evidence to be included among the serial numbers of the Purchase

Contracts 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 6, revoke such action so far as concerns such Purchase Contract; *provided* that such revocation shall not become effective until three Business Days after such filing. Except as aforesaid, any such action taken by the Holder of any Purchase Contract shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Purchase Contract and of any Purchase Contracts issued in exchange or substitution therefor or on registration of transfer thereof, irrespective of whether or not any notation in regard thereto is made upon any such Purchase Contract. Any action taken by the Holders of the percentage of the number of Purchase Contracts specified in this Agreement in connection with such action shall be conclusively binding upon the Company, the Purchase Contract Agent, the Trustee and the Holders of all the Purchase Contracts affected by such action.

Section 6.05. Record Date for Consents and Waivers. The Company may, but shall not be obligated to, establish a record date for the purpose of determining the Persons entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Agreement to be given made or taken by Holders of Purchase Contracts. If a record date is fixed, the Holders on such record date, or their duly designated proxies, and any such Persons, shall be entitled to give, make or take any such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holder remains a Holder after such record date; *provided, however*, that unless such waiver or consent is obtained from the Holders, or duly designated proxies, of the requisite number of Outstanding Purchase Contracts prior to the date which is the 120th day after such record date, any such waiver or consent previously given shall automatically and, without further action by any Holder be cancelled and of no further effect.

ARTICLE VII REMEDIES

Section 7.01. Unconditional Right of Holders to Receive Shares of Common Stock. Each Holder of a Purchase Contract (whether or not included in a Unit) shall have the right, which is absolute and unconditional, to receive the shares of Common Stock (and/or, in the case of a Merger Termination Redemption, any cash included in the Redemption Amount) pursuant to such Purchase Contract and to institute suit for the enforcement of any such right to receive the shares of Common Stock (and/or, in the case of a Merger Termination Redemption, any cash included in the Redemption Amount), and such right shall not be impaired without the consent of such Holder.

Section 7.02. Notice To Purchase Contract Agent; Limitation On Proceedings. Holders of not less than 25% of Outstanding Purchase Contracts, by notice given to the Purchase Contract Agent, may request that Purchase Contract Agent to institute proceedings with respect to a default relating to any covenant hereunder; *provided*, subject to Section 7.08 and Article VIII hereof, the Purchase Contract Agent shall have no obligation to institute any such proceeding. No Holder of Purchase Contracts may institute any proceedings, judicial or otherwise, with respect to this Agreement or for any remedy hereunder, except in the case of failure of the Purchase Contract Agent, for 60 days, to act after the Purchase Contract Agent has received a written request to institute proceedings in respect of a default with respect to any

covenant hereunder from the Holders of not less than 25% of the Outstanding Purchase Contracts, as well as an offer of indemnity reasonably satisfactory to the Purchase Contract Agent. This provision will not prevent any Holder of Purchase Contracts from instituting suit for the delivery of Common Stock (and/or, in the case of a Merger Termination Redemption, any cash included in the Redemption Amount) deliverable upon settlement or redemption of the Purchase Contracts on any Settlement Date.

Section 7.03. Restoration of Rights and Remedies. If any Holder or the Purchase Contract Agent has instituted any proceeding to enforce any right or remedy under this Agreement and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to such Holder or the Purchase Contract Agent, then and in every such case, subject to any determination in such proceeding, the Company and such Holder or the Purchase Contract Agent shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of such Holder shall continue as though no such proceeding had been instituted.

Section 7.04. 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 3.10, no right or remedy herein conferred upon or reserved to the Holders or the Purchase Contract Agent 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 7.05. Delay or Omission Not Waiver. No delay or omission of any Holder or the Purchase Contract Agent to exercise any right or remedy upon a default hereunder shall impair any such right or remedy or constitute a waiver of any such right. Every right and remedy given by this Article or by law to the Holders or the Purchase Contract Agent may be exercised from time to time, and as often as may be deemed expedient, by such Holders or the Purchase Contract Agent.

Section 7.06. Undertaking for Costs. All parties to this Agreement agree, and each Holder of a Purchase Contract, by its acceptance of such Purchase Contract shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Purchase Contract Agent for any action taken, suffered or omitted by it as Purchase Contract Agent, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and costs against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section shall not apply to any suit instituted by (a) the Purchase Contract Agent, or (b) any Holder for the enforcement of the right to receive shares of Common Stock or other Exchange Property issuable upon settlement or the Redemption Amount payable or deliverable, as the case may be, upon redemption, as the case may be, of the Purchase Contracts held by such Holder.

Section 7.07. Waiver of Stay or Execution Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or assume or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Agreement; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Purchase Contract Agent or the Holders, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 7.08. Control by Majority. The Holders of not less than a majority in number of the Outstanding Purchase Contracts shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Purchase Contract Agent, or of exercising any trust or power conferred upon the Purchase Contract Agent; *provided* that the Purchase Contract Agent has received indemnity reasonably satisfactory to it. Notwithstanding the foregoing, the Purchase Contract Agent may refuse to follow any direction that is in conflict with any law or the Purchase Contract Agreement, or that may involve it in personal liability.

ARTICLE VIII THE PURCHASE CONTRACT AGENT AND TRUSTEE

Section 8.01. Certain Duties and Responsibilities. (a) Each of the Purchase Contract Agent and Trustee undertakes to perform, with respect to the Units and Purchase Contracts, such duties and only such duties as are specifically delegated to it and set forth in this Agreement.

(b) No provision of this Agreement shall be construed to relieve the Purchase Contract Agent from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

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

(ii) in the absence of bad faith on the part of the Purchase Contract Agent and/or the Trustee, as applicable, the Purchase Contract Agent and/or the Trustee, as applicable, 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 Purchase Contract Agent and/or the Trustee, as applicable, and conforming to the requirements of this Agreement; but in the case of any such statements, certificates or opinions which by any provision hereof are specifically required to be furnished to the Purchase Contract Agent and/or the Trustee, the Purchase Contract Agent and/or the Trustee, as applicable, shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

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

(iv) the Purchase Contract Agent and/or the Trustee, as applicable, 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 pursuant to Section 7.08 relating to the time, method and place of conducting any proceeding for any remedy available to the Purchase Contract Agent and/or the Trustee, as applicable, or exercising any right or power conferred upon the Purchase Contract Agent and/or the Trustee, as applicable, under this Agreement.

(c) This Agreement shall not be deemed to create a fiduciary relationship under state or federal law between U.S. Bank National Association, in its capacity as the Purchase Contract Agent, and any Holder of any Equity-Linked Security or between U.S. Bank National Association in its capacity as Trustee under the Indenture, and any Holder of any Purchase Contract (whether separated or as part of a Unit). Nothing herein shall be deemed to govern or effect the Trustee's rights, duties, responsibilities, benefits, protections, indemnities or immunities with respect to the Notes, which shall be governed by the Indenture.

None of the provisions contained in this Agreement shall require the Purchase Contract Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there shall be reasonable ground for believing that the repayment of such funds or adequate indemnity against such liability is not reasonably assured to it.

Section 8.02. Notice of Default. Within 90 days after the occurrence of any default by the Company hereunder of which a Responsible Officer of the Purchase Contract Agent has knowledge (subject to Section 8.03(h) hereof), the Purchase Contract Agent shall notify the Company and the Holders of Purchase Contracts of such default hereunder, unless such Responsible Officer of the Purchase Contract Agent has actual knowledge that such default shall have been cured or waived.

Section 8.03. Certain Rights of Purchase Contract Agent. Subject to the provisions of Section 8.01:

(a) the Purchase Contract Agent may rely and shall be protected in acting or refraining from acting upon any resolution, Officer's Certificate 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 or Issuer Order (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Purchase Contract Agent by a Board Resolution;

(c) the Purchase Contract Agent may consult with counsel of its selection and any advice of such counsel promptly confirmed in writing 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 reliance thereon in accordance with such advice or Opinion of Counsel;

(d) the Purchase Contract Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request, order or direction of any of the Holders pursuant to the provisions of this Agreement (including, without limitation, pursuant to Section 7.08), unless such Holders shall have offered to the Purchase Contract Agent reasonably satisfactory security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby;

(e) the Purchase Contract Agent 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 Agreement and in no case shall the Purchase Contract Agent be liable for any act or omission hereunder in the absence of its own gross negligence, willful misconduct or bad faith;

(f) the Purchase Contract Agent 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 the Outstanding Purchase Contracts; *provided* that, if the payment within a reasonable time to the Purchase Contract Agent of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Purchase Contract Agent, not reasonably assured to the Purchase Contract Agent by the security afforded to it by the terms of this Agreement, the Purchase Contract Agent may require indemnity against such expenses or liabilities as a condition to proceeding; the reasonable expenses of every such investigation shall be paid by the Company or, if paid by the Purchase Contract Agent or any predecessor Purchase Contract Agent, shall be repaid by the Company upon demand;

(g) the Purchase Contract Agent may execute any of the rights or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys not regularly in its employ and the Purchase Contract Agent 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 Purchase Contract Agent shall not be charged with knowledge of any default with respect to a series of Securities unless either a Responsible Officer of the Purchase Contract Agent assigned to the Corporate Trust Office of the Purchase Contract Agent (or any successor division or department of the Purchase Contract Agent) shall have received written notice of such default from the Company or any Holder;

(i) the Purchase Contract Agent shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement and in no case shall the Purchase Contract Agent be liable for any losses, costs or liabilities of any kind except for those arising directly out of its own gross negligence or willful misconduct;

(j) the permissive rights of the Purchase Contract Agent hereunder shall not be construed as duties;

(k) in no event shall the Purchase Contract Agent be liable for any consequential, special, punitive or indirect loss or damages, even if advised of the likelihood thereof in advance and regardless of the form of action;

(l) the rights, privileges, protections, immunities and benefits given to the Purchase Contract Agent, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Purchase Contract Agent and the Trustee (whether or not the Trustee is expressly referred to in connection with any such rights, privileges, protections, immunities and benefits) in each of their capacities hereunder, and to each agent, custodian and other Person employed to act hereunder;

(m) each of the Purchase Contract Agent and the Trustee may request that the Company deliver an Officer's Certificate setting forth the name of the individuals and/or titles of Officers authorized at such time to take specific actions pursuant to this Agreement, 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 Officer's Certificate previously delivered and not superseded;

(n) neither the Purchase Contract Agent nor the Trustee shall be responsible for delays or failures in performance of its obligations hereunder resulting from acts beyond its reasonable control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes, terrorist attacks or other disasters, it being understood that each of the Purchase Contract Agent and the Trustee shall use reasonable best efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances; and

(o) the Purchase Contract Agent shall not be required to exercise discretion in exercising its rights, powers or authorizations hereunder and the Purchase Contract Agent shall be entitled to refrain from any such act unless and until the Purchase Contract Agent has received written direction from a majority in number of the Outstanding Purchase Contracts and indemnification satisfactory to it and shall not be liable for any delay in acting caused while awaiting such direction.

Section 8.04. Not Responsible for Recitals. The recitals contained herein and in the Certificates shall be taken as the statements of the Company and neither the Purchase Contract Agent nor the Trustee assumes any responsibility for their accuracy. Neither the Purchase Contract Agent nor the Trustee makes any representations as to the validity or sufficiency of either this Agreement or of the Purchase Contracts. Neither the Purchase Contract Agent nor the Trustee shall be accountable for the use or application by the Company of the proceeds in respect of the Purchase Contracts.

Section 8.05. May Hold Units and Purchase Contracts. Any Security Registrar or any other agent of the Company, or the Purchase Contract Agent, the Trustee and any of their Affiliates, in their individual or any other capacity, may become the owner of Units, Separate Purchase Contracts and Separate Notes and may otherwise deal with the Company or any other Person with the same rights it would have if it were not Security Registrar or such other agent, or the Purchase Contract Agent. The Company may become the owner of Units, Separate Purchase Contracts and Separate Notes.

Section 8.06. Money Held in Custody. Money held by the Purchase Contract Agent in custody hereunder need not be segregated from other funds except to the extent required by law or provided herein. The Purchase Contract Agent shall be under no obligation to invest or pay interest on any money received by it hereunder except as specifically instructed by the Company in an Issuer Order.

Section 8.07. Compensation, Reimbursement and Indemnification. The Company covenants and agrees to pay to the Purchase Contract Agent from time to time, and the Purchase Contract Agent shall be entitled to, such compensation as shall be agreed to in writing between the Company and the Purchase Contract Agent and the Company covenants and agrees to pay or reimburse the Purchase Contract Agent and each predecessor Purchase Contract Agent upon its request for all reasonable expenses, disbursements and advances incurred or made by or on behalf of it in accordance with any of the provisions of this Agreement (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 may arise from its gross negligence or bad faith. The Company also covenants to indemnify the Purchase Contract Agent and each predecessor Purchase Contract Agent 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 Purchase Contract Agent), incurred without gross negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this Agreement and its duties hereunder, including the costs and expenses of defending itself against or investigating any claim or liability (regardless of whether such claim is brought by the Company or any third party). The provisions of this Section 8.07 shall survive the resignation or removal of the Purchase Contract Agent and the termination of this Agreement. If the Purchase Contract Agent incurs any expenses, or if the Purchase Contract Agent is entitled to any compensation for services rendered (including fees and expenses of its agent and counsel), in each case, in connection with the performance of its obligations under this Agreement after the occurrence of a Bankruptcy Event, then any such expenses or compensation are intended to constitute expenses of administration under applicable Bankruptcy Laws. As security for the performance of the obligations of the Company under this Section the Purchase Contract Agent shall have a lien prior to the Holders upon all property and funds held or collected by the Purchase Contract Agent as such, except funds or property held in trust for payment to the Holders.

Section 8.08. Corporate Purchase Contract Agent Required; Eligibility. There shall at all times be a Purchase Contract Agent hereunder. The Purchase Contract Agent shall at all times be a corporation organized and doing business under the laws of the United States of America or of any state thereof or the District of Columbia having a combined capital and surplus of at least \$25,000,000, and which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by federal, state or District of Columbia authority, or a corporation or other Person permitted to act as trustee by the Commission. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid 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. In case at any time the Purchase Contract Agent shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect specified in this Article.

Section 8.09. Resignation and Removal; Appointment of Successor. (a) No resignation or removal of the Purchase Contract Agent and no appointment of a successor Purchase Contract Agent pursuant to this Article shall become effective until the acceptance of appointment by the successor Purchase Contract Agent in accordance with the applicable requirements of Section 8.10.

(b) The Purchase Contract Agent may resign at any time by giving written notice thereof to the Company 60 days prior to the effective date of such resignation. If the instrument of acceptance by a successor Purchase Contract Agent required by Section 8.10 shall not have been delivered to the Purchase Contract Agent within 30 days after the giving of such notice of resignation, the resigning Purchase Contract Agent may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(c) The Purchase Contract Agent may be removed at any time the Holders of a majority in number of the Outstanding Purchase Contracts. If the instrument of acceptance by a successor Purchase Contract Agent required by Section 8.10 shall not have been delivered to the Purchase Contract Agent within 30 days after evidence of such removal is delivered to the Company and Purchase Contract Agent, the removed Purchase Contract Agent may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(d) If at any time:

(i) the Purchase Contract Agent shall cease to be eligible under Section 8.08 and shall fail to resign after written request therefor by the Company or by any such Holder; or

(ii) the Purchase Contract Agent shall be adjudged bankrupt or insolvent or a receiver of the Purchase Contract Agent or of its property shall be appointed or any public officer shall take charge or control of the Purchase Contract Agent or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, (x) the Company by a Board Resolution may remove the Purchase Contract Agent, or (y) any Holder who has been a bona fide Holder of a Purchase Contract for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Purchase Contract Agent and the appointment of a successor Purchase Contract Agent.

(e) If the Purchase Contract Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Purchase Contract Agent for any cause, the Company shall promptly appoint a successor Purchase Contract Agent and shall comply with the applicable requirements of Section 8.10. If no successor Purchase Contract Agent shall have been so appointed by the Company and accepted appointment in the manner required by Section 8.10, any Holder who has been a bona fide Holder of a Purchase Contract for at least six months, on behalf of itself and all others similarly situated, or the Purchase Contract Agent may petition at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(f) The Company shall give, or shall cause such successor Purchase Contract Agent to give, notice of each resignation and each removal of the Purchase Contract Agent and each appointment of a successor Purchase Contract Agent to Holders. Each notice shall include the name of the successor Purchase Contract Agent and the address of its Corporate Trust Office.

Section 8.10. Acceptance of Appointment by Successor. (a) In case of the appointment hereunder of a successor Purchase Contract Agent, every such successor Purchase Contract Agent so appointed shall execute, acknowledge and deliver to the Company and to the retiring Purchase Contract Agent an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Purchase Contract Agent shall become effective and such successor Purchase Contract Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, agencies and duties of the retiring Purchase Contract Agent. At the request of the Company or the successor Purchase Contract Agent, such retiring Purchase Contract Agent shall, upon its receipt of payment or reimbursement of any amounts due to it hereunder, execute and deliver an instrument transferring to such successor Purchase Contract Agent all the rights, powers and trusts of the retiring Purchase Contract Agent and shall duly assign, transfer and deliver to such successor Purchase Contract Agent all property and money held by such retiring Purchase Contract Agent hereunder.

(b) Upon request of any such successor Purchase Contract Agent, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Purchase Contract Agent all such rights, powers and agencies referred to in paragraph (a) of this Section.

(c) No successor Purchase Contract Agent shall accept its appointment unless at the time of such acceptance such successor Purchase Contract Agent shall be qualified and eligible under this Article.

Section 8.11. Merger; Conversion; Consolidation or Succession to Business. Any corporation into which the Purchase Contract Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Purchase Contract Agent shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Purchase Contract Agent, shall be the successor of the Purchase Contract Agent hereunder; *provided* that such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. If any Equity-Linked Securities shall have been authenticated on behalf of the Holders by the Trustee and Purchase Contract Agent then in office, but not delivered, any successor by merger, conversion or consolidation to such Purchase Contract Agent may adopt such Purchase Contract Agent's authentication and deliver the Equity-Linked Securities so authenticated with the same effect as if such successor Purchase Contract Agent had itself authenticated such Equity-Linked Securities.

Section 8.12. Preservation of Information; Communications to Holders. (a) The Purchase Contract Agent shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders as received by the Purchase Contract Agent in its capacity as Security Registrar.

(b) If three or more Holders (such three or more Holders, the "**Applicants**") apply in writing to the Purchase Contract Agent, and furnish to the Purchase Contract Agent reasonable proof that each such Applicant has owned a Unit or Separate Purchase Contract 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 Agreement or under the Units or Separate Purchase Contracts and is accompanied by a copy of the form of proxy or other communication that such Applicants propose to transmit, then the Purchase Contract Agent shall transmit to all the Holders copies of the form of proxy or other communication that is specified in such request, with reasonable promptness after a tender to the Purchase Contract Agent of the materials to be transmitted and of payment, or provision for the payment, of the reasonable expenses of such transmission.

Section 8.13. No Other Obligations of Purchase Contract Agent or Trustee. Except to the extent otherwise expressly provided in this Agreement, neither the Purchase Contract Agent nor Trustee assumes any obligations, and neither the Purchase Contract Agent nor Trustee shall be subject to any liability, under this Agreement or any Security evidencing a Unit or Purchase Contract in respect of the obligations of the Holder of any Unit or Purchase Contract thereunder. The Company agrees, and each Holder of a Security, by his or her acceptance thereof, shall be deemed to have agreed, that the Purchase Contract Agent's and/or Trustee's authentication, as applicable, of the Securities on behalf of the Holders shall be solely as agent and attorney-in-fact for the Holders, and that neither the Purchase Contract Agent nor Trustee shall have any obligation to perform such Purchase Contracts (whether held as components of Units or Separate Purchase Contracts) on behalf of the Holders, except to the extent expressly provided in Article 3 hereof.

Section 8.14. Tax Compliance. (a) The Purchase Contract Agent shall comply with all applicable certification, information reporting and withholding (including "backup" withholding) requirements imposed by applicable tax laws, regulations or administrative practice with respect to (i) any shares of Common Stock delivered upon settlement of the Purchase Contracts, any amounts paid in lieu of fractional shares of Common Stock upon settlement or redemption of the Purchase Contracts, and any other amounts included in the Purchase Contract Settlement Fund

paid to Holders upon settlement or redemption of any Purchase Contracts or (ii) the issuance, delivery, holding, transfer or exercise of rights under the Purchase Contracts. Such compliance shall include, without limitation, the preparation and timely filing of required returns and the timely payment of all amounts required to be withheld to the appropriate taxing authority or its designated agent. Notwithstanding anything to the contrary, but without limiting the requirements imposed by applicable tax laws, the Purchase Contract Agent's obligations under this Section 8.14 shall extend only to form 1099 reporting and any applicable withholding unless and until the Purchase Contract Agent is otherwise notified by the Company pursuant to paragraph (b) below.

(b) The Purchase Contract Agent shall, in accordance with the terms hereof, comply with any written direction received from the Company with respect to the execution or certification of any required documentation and the application of such requirements to particular payments or Holders or in other particular circumstances, and may for purposes of this Agreement conclusively rely on any such direction in accordance with the provisions of Section 8.01(b)(ii).

(c) The Purchase Contract Agent shall maintain all appropriate records documenting compliance with such requirements, and shall make such records available, on written request, to the Company or its authorized representative within a reasonable period of time after receipt of such request. For the avoidance of doubt, any costs or expenses incurred by the Purchase Contract Agent in connection with complying with its obligations under this shall be covered by Section 8.07.

ARTICLE IX SUPPLEMENTAL AGREEMENTS

Section 9.01. Supplemental Agreements Without Consent of Holders. Without the consent of any Holders, the Company, the Purchase Contract Agent and the Trustee at any time and from time to time, may enter into one or more agreements supplemental hereto, in form satisfactory to the Company and the Purchase Contract Agent, for the purpose of modifying in any manner the terms of the Purchase Contracts, or the provisions of this Agreement or the rights of the Holders in respect of the Purchase Contracts:

- (i) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants and obligations of the Company under this Agreement and the Units and Separate Purchase Contracts, if any;
- (ii) to add to the covenants for the benefit of Holders or to surrender any of the Company's rights or powers under this Agreement;
- (iii) to evidence and provide for the acceptance of appointment of a successor Purchase Contract Agent;
- (iv) upon the occurrence of a Reorganization Event, solely (i) to provide that each Purchase Contract will become a contract to purchase Exchange Property and (ii) to effect the related changes to the terms of the Purchase Contracts and the provisions of this Agreement, in each case, pursuant to Section 5.02;

(v) to conform the terms of the Purchase Contracts or the provisions of this Agreement to the “Description of the Purchase Contracts,” and “Description of the Units” sections in the Prospectus Supplement, as supplemented and/or amended by the related pricing term sheet;

(vi) to cure any ambiguity or manifest error, or to correct or supplement any provisions that may be inconsistent; or

(vii) to make any other provisions with respect to such matters or questions, so long as such action does not adversely affect the interest of the Holders.

Section 9.02. Supplemental Agreements with Consent of Holders. With the consent of the Holders of not less than a majority in number of the Outstanding Purchase Contracts, the Company, the Purchase Contract Agent and Trustee may enter into an one or more agreements supplemental hereto for the purpose of modifying in any manner the terms of the Purchase Contracts, or the provisions of this Agreement or the rights of the Holders in respect of the Purchase Contracts; *provided, however*, that, except as contemplated herein, no such supplemental agreement shall, without the consent of each Holder of an Outstanding Purchase Contract affected thereby:

(i) reduce the number of shares of Common Stock deliverable upon settlement of the Purchase Contracts (except to the extent expressly provided in Section 5.01);

(ii) change the Mandatory Settlement Date, or adversely modify the right to settle Purchase Contracts early or the Fundamental Change Early Settlement Right;

(iii) reduce the Redemption Amount or adversely modify the right of any Holder to receive such amount if the Company elects to redeem the Purchase Contract in connection with a Merger Termination Redemption;

(iv) reduce the above-stated percentage of Outstanding Purchase Contracts the consent of the Holders of which is required for the modification or amendment of the provisions of the Purchase Contracts or the Purchase Contract Agreement; or

(v) impair the right to institute suit for the enforcement of the Purchase Contracts.

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

Section 9.03. Execution of Supplemental Agreements. In executing, or accepting the additional agencies created by, any supplemental agreement permitted by this Article or the modifications thereby of the agencies created by this Agreement, the Purchase Contract Agent and Trustee shall be provided, and (subject to Section 8.01) shall be fully protected in relying upon, an Officer’s Certificate and an Opinion of Counsel stating that the execution of such supplemental agreement is authorized or permitted by this Agreement and does not violate the

Indenture, and that any and all conditions precedent to the execution and delivery of such supplemental agreement have been satisfied. The Purchase Contract Agent and Trustee may, but shall not be obligated to, enter into any such supplemental agreement that affects the Purchase Contract Agent's or Trustee's own rights, duties or immunities under this Agreement or otherwise.

Section 9.04. Effect of Supplemental Agreements. Upon the execution of any supplemental agreement under this Article, this Agreement and the Equity-Linked Securities shall be modified in accordance therewith, and such supplemental agreement shall form a part of this Agreement and the Equity Linked Securities for all purposes; and every Holder of Securities theretofore or thereafter authenticated on behalf of the Holders and delivered hereunder, shall be bound thereby.

Section 9.05. Reference to Supplemental Agreements. Securities authenticated on behalf of the Holders and delivered after the execution of any supplemental agreement pursuant to this Article may, and shall if required by the Purchase Contract Agent, bear a notation in form approved by the Purchase Contract Agent as to any matter provided for in such supplemental agreement. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Purchase Contract Agent, the Trustee and the Company, to any such supplemental agreement may be prepared and executed by the Company and authenticated on behalf of the Holders and delivered by the Purchase Contract Agent in exchange for outstanding Securities.

Section 9.06. Notice of Supplemental Agreements. After any supplemental agreement under this Article becomes effective, the Company shall give to the Holders a notice briefly describing such supplemental agreement; *provided, however*, that the failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of such supplemental agreement.

ARTICLE X CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 10.01. Covenant Not to Consolidate, Merge, Convey, Transfer or Lease Property Except Under Certain Conditions. The Company covenants that it will not merge with and into, consolidate with any other Person or sell, assign, transfer, lease or convey all or substantially all of its properties and assets to any Person, unless:

(i) the successor entity to such consolidation or merger, or the entity which acquires all or substantially all of the Company's assets, shall expressly assume all of the Company's obligations under the Purchase Contracts and this Agreement via a supplement to this Agreement;

(ii) the successor entity to such consolidation or merger, or the entity which acquires all or substantially all of the Company's assets, shall be a corporation organized and existing under the laws of the United States or any state thereof or the District of Columbia; and

(iii) immediately after the merger, consolidation, sale, assignment, transfer, lease or conveyance, no default has occurred and is continuing under the Purchase Contracts or this Agreement.

Section 10.02. Rights and Duties of Successor Entity. In case of any such merger, consolidation, sale, assignment, transfer or conveyance (but not any such lease) and upon any such assumption by a successor entity in accordance with Section 10.01, such successor entity shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company. Such successor entity thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Securities evidencing Units or Purchase Contracts issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Purchase Contract Agent; and, upon the order of such successor entity, instead of the Company, and subject to all the terms, conditions and limitations in this Agreement prescribed, the Purchase Contract Agent and Trustee (if applicable) shall authenticate on behalf of the Holders and deliver any Securities that previously shall have been signed and delivered by the officers of the Company to the Purchase Contract Agent and Trustee for authentication, and any Security evidencing Units or Purchase Contracts that such successor corporation thereafter shall cause to be signed and delivered to the Purchase Contract Agent and Trustee for that purpose. All the Securities issued shall in all respects have the same legal rank and benefit under this Agreement as the Securities theretofore or thereafter issued in accordance with the terms of this Agreement as though all of such Securities had been issued at the date of the execution hereof.

In the event of any such merger, consolidation, sale, assignment, transfer, lease or conveyance, such change in phraseology and form (but not in substance) may be made in the Securities evidencing Units or Purchase Contracts thereafter to be issued as may be appropriate.

Section 10.03. Officer's Certificate and Opinion of Counsel Given to Purchase Contract Agent. The Purchase Contract Agent, subject to Section 8.01 and Section 8.03, shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any such merger, consolidation, sale, assignment, transfer, lease or conveyance, and any such assumption, complies with the provisions of this Article and that all conditions precedent to the consummation of any such merger, consolidation, sale, assignment, transfer, lease or conveyance have been met.

ARTICLE XI COVENANTS OF THE COMPANY

Section 11.01. Performance Under Purchase Contracts. The Company covenants and agrees for the benefit of the Holders from time to time of the Units and Purchase Contracts, as the case may be, that it will duly and punctually perform its obligations under the Units and Purchase Contracts, as the case may be, in accordance with the terms of the Units and Purchase Contracts and this Agreement.

Section 11.02. Maintenance of Office or Agency. The Company will maintain in the Borough of Manhattan, New York City an office or agency where Securities may be presented or surrendered for acquisition of shares of Common Stock (and/or in the case of a Merger

Termination Redemption, any cash included in the Redemption Amount) upon settlement or redemption of the Purchase Contracts on any Settlement Date, and where notices and demands to or upon the Company in respect of the Purchase Contracts and this Agreement may be served. The Company will give prompt written notice to the Purchase Contract Agent 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 Purchase Contract Agent with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office, and the Company hereby appoints the Purchase Contract Agent 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 Securities 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 the Borough of Manhattan, New York City for such purposes. The Company will give prompt written notice to the Purchase Contract Agent of any such designation or rescission and of any change in the location of any such other office or agency. The Company hereby designates as the place of payment for the Purchase Contracts the Corporate Trust Office and appoints the Purchase Contract Agent at its Corporate Trust Office as paying agent in such city.

Section 11.03. Statements of Officers of the Company as to Default; Notice of Default. The Company will deliver to the Purchase Contract Agent, within 120 days after the end of each fiscal year of the Company (which fiscal year ends, as of the Issue Date, on December 31, 2019) ending after the date hereof, an Officer's Certificate, stating whether or not to the knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions hereof, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge and what action the Company is taking or proposes to take with respect thereto.

Section 11.04. Existence. The Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence in accordance with its organizational documents; *provided* that this Section 11.04 shall not prohibit any transaction otherwise permitted by Article 10.

Section 11.05. Company to Reserve Common Stock. The Company shall at all times reserve and keep available out of its authorized but unissued Common Stock, solely for issuance upon settlement or redemption of the Purchase Contracts, the number of shares of Common Stock that would be issuable upon the settlement of all Outstanding Purchase Contracts (whether or not included in a Unit), assuming settlement at the Maximum Settlement Rate.

Section 11.06. Covenants as to Common Stock. The Company covenants that all shares of Common Stock issuable upon settlement or redemption of any Outstanding Purchase Contract will, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, free from all taxes, liens and charges and not subject to any preemptive rights.

The Company further covenants that, as long as the Common Stock is listed on the NYSE or any other national securities exchange, the Company will, if permitted by the rules of such exchange, list and keep listed, so long as the Common Stock shall be so listed on such exchange, all Common Stock issuable upon settlement or redemption of the Purchase Contracts; *provided, however*, that, if the rules of such exchange system permit the Company to defer the listing of such Common Stock until the first delivery of Common Stock upon settlement or redemption of Purchase Contracts in accordance with the provisions of this Agreement, the Company covenants to list such Common Stock issuable upon settlement or redemption of the Purchase Contracts in accordance with the requirements of such exchange at such time.

Section 11.07. Tax Treatment. The Company agrees, and by purchasing a Unit each Beneficial Holder agrees, for United States federal income tax purposes, to (a) treat a Unit as an investment unit composed of two separate instruments, in accordance with its form, (b) treat the Notes as indebtedness of the Company and (c) in the case of each Beneficial Holder acquiring the Units at original issuance, allocate the Stated Amount of each Unit between the Note and the Purchase Contract so that such Beneficial Holder's initial tax basis in each Purchase Contract will be \$84.3901 and each such Beneficial Holder's initial tax basis in each Note will be \$15.6099 (as reflected in the cross-receipt for the Units' initial issuance).

[Remainder of this page intentionally left blank]

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

COLFAX CORPORATION

By: /s/ Christopher Hix
Name: Christopher Hix
Title: Senior Vice President, Finance, Chief Financial Officer and Treasurer

U.S. BANK NATIONAL ASSOCIATION, as Purchase Contract Agent

By: /s/ Philip G. Kane, Jr.
Name: Philip G. Kane, Jr.
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION, as Trustee under the Indenture

By: /s/ Philip G. Kane, Jr.
Name: Philip G. Kane, Jr.
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION, as Attorney-in-Fact of the Holders from time to time as provided under the Purchase Contract Agreement

By: /s/ Philip G. Kane, Jr.
Name: Philip G. Kane, Jr.
Title: Vice President

[Signature Page to Purchase Contract Agreement]

[FORM OF FACE OF UNIT]

[THIS SECURITY IS A GLOBAL UNIT WITHIN THE MEANING OF THE PURCHASE CONTRACT AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY OR A SUCCESSOR DEPOSITARY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN CERTIFICATED FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (THE “**DEPOSITARY**”) TO THE NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY 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 DEPOSITARY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]*

* Include if a Global Unit.

COLFAX CORPORATION

5.75% TANGIBLE EQUITY UNITS

CUSIP No. 194014 205
ISIN No. US1940142052
No.

[Initial]* Number of Units

This Unit certifies that [CEDE & CO., as nominee of The Depository Trust Company]* []** (the “**Holder**”), or registered assigns, is the registered owner of the number of Units set forth above[, which number may from time to time be reduced or increased, as set forth on Schedule A, as appropriate, in accordance with the terms of the Purchase Contract Agreement (as defined below), but which number, taken together with the number of all other outstanding Units, shall not exceed 4,600,000 Units at any time]*.

Each Unit consists of (i) a Purchase Contract issued by the Company, and (ii) a Note issued by the Company. Each Unit evidenced hereby is governed by a Purchase Contract Agreement, dated as of January 11, 2019 (as may be supplemented from time to time, the “**Purchase Contract Agreement**”), between the Company and U.S. Bank National Association, as Purchase Contract Agent (including its successors hereunder, the “**Purchase Contract Agent**”), as Trustee (including its successors hereunder, the “**Trustee**”) under the Indenture and as attorney-in-fact for the Holders of Purchase Contracts from time to time.

Reference is hereby made to the Purchase Contract Agreement and the Indenture and, in each case supplemental agreements thereto, for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Purchase Contract Agent, the Trustee, the Company and the Holders and of the terms upon which the Units are, and are to be, executed and delivered.

Upon the conditions and under the circumstances set forth in the Purchase Contract Agreement, Holders of Units shall have the right to separate a Unit into its component parts, and a Holder of a Separate Purchase Contract and Separate Note shall have the right to re-create a Unit.

The Company agrees, and by purchasing a Unit each Beneficial Holder agrees, for United States federal income tax purposes, to (1) treat each Unit as an investment unit composed of two separate instruments, in accordance with its form, (2) treat each Note as indebtedness of the Company and (3) in the case of each Beneficial Holder acquiring the Units at original issuance, allocate the Stated Amount of each Unit between the Note and the Purchase Contract so that such Beneficial Holder’s initial tax basis in each Purchase Contract will be \$84.3901 and each such Beneficial Holder’s initial tax basis in each Note will be \$15.6099.

* Include only if a Global Unit.

** Include only if not a Global Unit.

The Units shall be governed by, and construed in accordance with, the laws of the State of New York.

Capitalized terms used herein and not defined have the meanings given to such terms in the Purchase Contract Agreement.

In the event of any inconsistency between the provisions of this Unit and the provisions of the Purchase Contract Agreement, the Purchase Contract Agreement shall prevail.

[SIGNATURES ON THE FOLLOWING PAGE]

A-3

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated:

COLFAX CORPORATION

By: _____
Name: _____
Title: _____

UNIT CERTIFICATE OF AUTHENTICATION
OF PURCHASE CONTRACT AGENT AND TRUSTEE UNDER THE INDENTURE

This is one of the Units referred to in the within mentioned Purchase Contract Agreement.

Dated:

U.S. BANK NATIONAL ASSOCIATION, as Purchase
Contract Agent

By: _____
Authorized Signatory

U.S. BANK NATIONAL ASSOCIATION, as Trustee under
the Indenture

By: _____
Authorized Signatory

[Intentionally Blank]

SCHEDULE A*

[SCHEDULE OF INCREASES OR DECREASES IN GLOBAL UNIT]

The initial number of Units evidenced by this Global Unit is []. The following increases or decreases in this Global Unit have been made:

<u>Date</u>	<u>Amount of increase in number of Units evidenced by the Global Unit</u>	<u>Amount of decrease in number of Units evidenced by the Global Unit</u>	<u>Number of Units evidenced by the Global Unit following such decrease or increase</u>	<u>Signature of authorized signatory of Purchase Contract Agent</u>
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* Include only if a Global Unit.

[FORM OF SEPARATION NOTICE]

U.S. BANK NATIONAL ASSOCIATION
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, Connecticut 06103
Attention: Corporate Trust Services, re: Colfax Corporation

Re: Separation of [Global]* Units

The undersigned [Beneficial Holder]* hereby notifies you that it wishes to separate Units [as to which it holds a Book-Entry Interest]* (the “**Relevant Units**”) into a number of Notes equal to the number of Relevant Units and a number of Purchase Contracts equal to the number of Relevant Units in accordance with the Purchase Contract Agreement (the “**Purchase Contract Agreement**”) dated January 11, 2019 between the Company and U.S. Bank National Association, as Purchase Contract Agent, as Trustee under the Indenture and as attorney-in-fact for the Holders of Purchase Contracts from time to time. Terms used and not defined herein have the meaning assigned to such terms in the Purchase Contract Agreement.

The undersigned [includes herewith]** [Beneficial Holder has instructed the undersigned Depository Participant to transfer to you its Book-Entry Interests in]* the number of Units specified in the immediately succeeding paragraph. The undersigned [includes herewith]** [Beneficial Holder has furnished the undersigned Depository Participant with]* the appropriate endorsements and documents and paid all applicable transfer or similar taxes, if any, to the extent required by the Purchase Contract Agreement.

Please [deliver to the undersigned’s address specified below]** [transfer to the account of the undersigned Beneficial Holder with the undersigned Depository Participant the beneficial interests in]* (i) the number of Separate Notes and (ii) number of Separate Purchase Contracts represented by the number of Units specified above.

[SIGNATURES ON THE FOLLOWING PAGE]

* Include only if a Global Unit.

** Include only if not a Global Unit.

IN WITNESS WHEREOF, the [undersigned has caused this instrument to be duly executed]* [Depository Participant has caused this instrument to be duly executed on behalf of itself and the undersigned Beneficial Holder]**

Dated:

[NAME OF BENEFICIAL HOLDER]

By: _____
Name:
Title:
Address:

[NAME OF DEPOSITORY PARTICIPANT]*

By: _____
Name:
Address:

Attest By:

* Include only if not a Global Unit.
** Include only if a Global Unit.

[FORM OF RECREATION NOTICE]

U.S. BANK NATIONAL ASSOCIATION
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, Connecticut 06103
Attention: Corporate Trust Services, re: Colfax Corporation

Re: Recreation of [Global]* Units

The undersigned [Beneficial Holder]* hereby notifies you that it wishes to recreate Units [as to which it holds a Book-Entry Interest]* (the “**New Units**”) from a number of Separate Notes equal to the number of New Units and a number of Separate Purchase Contracts equal to the number of New Units in accordance with the Purchase Contract Agreement (the “**Purchase Contract Agreement**”) dated as of January 11, 2019 between the Company and U.S. Bank National Association, as Purchase Contract Agent, as Trustee under the Indenture and as attorney-in-fact for the Holders of Purchase Contracts from time to time. Terms used and not defined herein have the meaning assigned to such terms in the Purchase Contract Agreement.

The undersigned [includes herewith]** [Beneficial Holder has instructed the undersigned Depository Participant to transfer to you its Book-Entry Interests in]* the applicable number of Separate Notes and the applicable number of Separate Purchase Contracts sufficient for the recreation of the number of Units specified above. The undersigned [includes herewith]** [Beneficial Holder has furnished the undersigned Depository Participant with]* the appropriate endorsements and documents and paid all applicable transfer or similar taxes, if any, to the extent required by the Purchase Contract Agreement.

Please [deliver to the undersigned’s address specified below]** [transfer to the account of the undersigned Beneficial Holder with the undersigned Depository Participant the beneficial interests in]* the number of Units specified above.

[SIGNATURES ON THE FOLLOWING PAGE]

* Include only if a Global Unit.

** Include only if not a Global Unit.

IN WITNESS WHEREOF, the [undersigned has caused this instrument to be duly executed]* [Depository Participant has caused this instrument to be duly executed on behalf of itself and the undersigned Beneficial Holder]**

Dated:

[NAME OF BENEFICIAL HOLDER]

By: _____
Name:
Title:
Address:

[NAME OF DEPOSITORY PARTICIPANT]*

By: _____
Name:
Address:

Attest By:

* Include only if not a Global Unit.
** Include only if a Global Unit.

COLFAX CORPORATION

PURCHASE CONTRACTS

No. _____

Initial Number of Purchase Contracts: _____

This Purchase Contract certifies that, U.S. Bank National Association, as attorney-in-fact of holder(s) of the Purchase Contracts evidenced hereby, or its registered assigns (the "**Holder**") is the registered owner of the number of Purchase Contracts set forth above, which number may from time to time be reduced or increased as set forth on Schedule A hereto, as appropriate, in accordance with the terms of the Purchase Contract Agreement (as defined below), but which number of Purchase Contracts, taken together with the number of all other Outstanding Purchase Contracts, shall not exceed 4,600,000 Purchase Contracts at any time.

Each Purchase Contract consists of the rights of the Holder under such Purchase Contract with the Company. All capitalized terms used herein which are defined in the Purchase Contract Agreement (as defined on the reverse hereof) have the meaning set forth therein.

Each Purchase Contract evidenced hereby obligates the Company to deliver to the Holder of this Purchase Contract on the Mandatory Settlement Date a number shares of Common Stock, \$0.001 par value ("**Common Stock**"), of the Company equal to the Settlement Rate, unless such Purchase Contract has settled or been redeemed prior to the Mandatory Settlement Date, all as provided in the Purchase Contract Agreement and more fully described on the reverse hereof.

Reference is hereby made to the further provisions set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

COLFAX CORPORATION

By: _____
Name:
Title:

Dated:

REGISTERED HOLDER(S) (as to obligations of such holder(s) under the Purchase Contracts evidenced hereby)

By: U.S. BANK NATIONAL ASSOCIATION, not individually but solely as Attorney-in-Fact of such holder(s)

By: _____

Name:

Title:

PURCHASE CONTRACT CERTIFICATE OF AUTHENTICATION OF
PURCHASE CONTRACT AGENT

This is one of the Purchase Contracts referred to in the within-mentioned Purchase Contract Agreement.

U.S. BANK NATIONAL ASSOCIATION as Purchase
Contract Agent

By: _____
Authorized Signatory

Dated:

Each Purchase Contract evidenced hereby is governed by a Purchase Contract Agreement, dated as of January 11, 2019 (as may be supplemented from time to time, the “**Purchase Contract Agreement**”), between Colfax Corporation, a Delaware corporation (the “**Company**”) and U.S. Bank National Association, as Purchase Contract Agent (including its successors hereunder, the “**Purchase Contract Agent**”), as Trustee under the Indenture and as attorney-in-fact for the Holders of Purchase Contracts from time to time. Reference is hereby made to the Purchase Contract Agreement and supplemental agreements thereto for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Purchase Contract Agent, the Company and the Holders and of the terms upon which the Purchase Contracts are, and are to be, executed and delivered.

Each Purchase Contract evidenced hereby obligates the Company to deliver to the Holder of this Purchase Contract, on the Mandatory Settlement Date, a number of shares of Common Stock equal to the Settlement Rate, unless such Purchase Contract has settled or been redeemed prior to the Mandatory Settlement Date, in either case, pursuant to the terms of the Purchase Contract Agreement.

No fractional shares of Common Stock will be issued upon settlement or redemption of Purchase Contracts, as provided in Section 4.13 of the Purchase Contract Agreement.

The Purchase Contracts are issuable only in registered form and only in denominations of a single Purchase Contract and any integral multiple thereof. The transfer of any Purchase Contract will be registered and Purchase Contracts may be exchanged as provided in the Purchase Contract Agreement.

The Purchase Contracts are initially being issued as part of the 5.75% Tangible Equity Units (the “**Units**”) issued by the Company pursuant to the Purchase Contract Agreement. Holders of the Units have the right to separate such Units into their constituent parts, consisting of Separate Notes and Separate Purchase Contracts, during the times, and under the circumstances, described in the Purchase Contract Agreement. Following separation of any Unit into its constituent parts, the Separate Purchase Contracts are transferable independently from the Separate Notes. In addition, Separate Purchase Contracts can be recombined with Separate Notes to recreate Units, as provided for in the Purchase Contract Agreement.

The Holder of this Purchase Contract, by its acceptance hereof, authorizes the Purchase Contract Agent to enter into and perform the Purchase Contract Agreement on its behalf as its attorney-in-fact and agrees to be bound by the terms and provisions thereof.

Subject to certain exceptions set forth in the Purchase Contract Agreement, the provisions of the Purchase Contract Agreement may be amended with the consent of the Holders of a majority of the Purchase Contracts.

The Purchase Contracts shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company, the Purchase Contract Agent, and any agent of the Company or the Purchase Contract Agent, may treat the Person in whose name this Purchase Contract is registered as the owner of the Purchase Contracts, evidenced hereby, for the purpose of performance of the Purchase Contracts evidenced by such Purchase Contracts and for all other purposes whatsoever, and neither the Company nor the Purchase Contract Agent, nor any agent of the Company or the Purchase Contract Agent, shall be affected by notice to the contrary.

The Purchase Contracts shall not entitle the Holder to any of the rights of a holder of the Common Stock or other Exchange Property, except as provided by the Purchase Contract Agreement.

Each Purchase Contract (whether or not included in a Unit) is a security governed by Article 8 of the Uniform Commercial Code as in effect in the State of New York on the date hereof.

Unless a conformed copy of the Purchase Contract Agreement has been filed on the EDGAR system of the U.S. Securities and Exchange Commission, a copy of the Purchase Contract Agreement will be available for inspection at the offices of the Company.

In the event of any inconsistency between the provisions of this Purchase Contract and the provisions of the Purchase Contract Agreement, the Purchase Contract Agreement shall prevail.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM:	as tenants in common	
UNIF GIFT MIN ACT:	Custodian (cust)	(minor)
	Under Uniform Gifts to Minors Act of	
TENANT:	as tenants by the entireties	
JT TEN:	as joint tenants with rights of survivorship and not as tenants in common	

Additional abbreviations may also be used though not in the above list.

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

(Please insert Social Security or Taxpayer I.D. or other Identifying Number of Assignee)

(Please Print or Type Name and Address Including Postal Zip Code of Assignee)

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

DATED:	Signature Notice: The signature to this assignment must correspond with the name as it appears upon the face of the within Purchase Contracts in every particular, without alteration or enlargement or any change whatsoever.
--------	---

Signature Guarantee:

SETTLEMENT INSTRUCTIONS

The undersigned Holder directs that a certificate for shares of Common Stock or other securities, as applicable, deliverable upon settlement or redemption of the number of Purchase Contracts evidenced by this Purchase Contract be registered in the name of, and delivered, together with a check in payment for any fractional share (or cash included in the Redemption Amount, if applicable), to the undersigned at the address indicated below unless a different name and address have been indicated below. If shares of Common Stock or other securities, as applicable, are to be registered in the name of a Person other than the undersigned, the undersigned will pay any documentary, stamp or similar issue or transfer tax payable incidental thereto, as provided in the Purchase Contract Agreement.

Dated:

Signature
Signature Guarantee:
(if assigned to another Person)

If shares are to be registered in the name of and delivered to (or cash is to be paid to) a Person other than the Holder, please (i) print such Person's name and address and (ii) provide a guarantee of your signature:

Name
Address

Name
Address

Social Security or other Taxpayer Identification Number, if any

ELECTION TO SETTLE EARLY

The undersigned Holder of this Purchase Contract hereby irrevocably exercises the option to effect Early Settlement (which Early Settlement may, as applicable, be deemed to be in connection with a Fundamental Change pursuant to Section 4.07 of the Purchase Contract Agreement) in accordance with the terms of the Purchase Contract Agreement with respect to the Purchase Contracts evidenced by this Purchase Contract as specified below. The undersigned Holder directs that a certificate for shares of Common Stock or other securities, as applicable, deliverable upon such Early Settlement be registered in the name of, and delivered, together with a check in payment for any fractional share and any Purchase Contract representing any Purchase Contracts evidenced hereby as to which Early Settlement is not effected, to the undersigned at the address indicated below unless a different name and address have been indicated below. If shares of Common Stock or other securities, as applicable, are to be registered in the name of a Person other than the undersigned, the undersigned will pay any documentary, stamp or similar issue or transfer tax payable incident thereto, as provided in the Purchase Contract Agreement.

Dated:

Signature

Signature Guarantee:

Number of Purchase Contracts evidenced hereby as to which Early Settlement is being elected:

If shares of Common Stock or Purchase Contracts are to be registered in the name of and delivered to a Person other than the Holder, please print such Person's name and address:

REGISTERED HOLDER

Please print name and address of Registered Holder:

Name
Address

Name
Address

Social Security or other Taxpayer Identification Number, if any

SCHEDULE A*

**SCHEDULE OF INCREASES OR DECREASES
IN THE PURCHASE CONTRACT**

The initial number of Purchase Contracts evidenced by this certificate is []. The following increases or decreases in this certificate have been made:

<u>Date</u>	<u>Amount of increase in number of Purchase Contracts evidenced hereby</u>	<u>Amount of decrease in number of Purchase Contracts evidenced hereby</u>	<u>Number of Purchase Contracts evidenced hereby following such decrease or increase</u>	<u>Signature of authorized signatory of Purchase Contract</u>
-------------	--	--	--	---

* Include only if a Global Purchase Contract.

COLFAX CORPORATION
6.50% SENIOR AMORTIZING NOTES DUE 2022

CUSIP No.: 194014 304
ISIN No.: US1940143043
No. []

[Initial]* Number of Notes: []

COLFAX CORPORATION, a Delaware corporation (the “**Company**”, which term includes any successor under the Indenture hereinafter referred to), for value received, hereby promises to pay to [CEDE & CO., as nominee of The Depository Trust Company]* []**, or registered assigns (the “**Holder**”), the initial principal amount of \$15.6099 for each of the number of Notes set forth above[, which number of Notes may from time to time be reduced or increased as set forth in Schedule A hereto, as appropriate, in accordance with the terms of the Indenture]*, in equal quarterly installments (except for the first such payment) (each such payment, an “**Installment Payment**”), constituting a payment of interest (at a rate of 6.50% per annum) and a partial repayment of principal, payable on each January 15, April 15, July 15 and October 15, commencing on April 15, 2019 (each such date, an “**Installment Payment Date**”, and the period from, and including, January 11, 2019 to, but excluding, the first Installment Payment Date and thereafter each quarterly period from, and including, the immediately preceding Installment Payment Date to, but excluding, the relevant Installment Payment Date, an “**Installment Payment Period**”) with the final Installment Payment due and payable on January 15, 2022, all as set forth on the reverse hereof and in the Indenture referred to on the reverse hereof.

Each Installment Payment for any Installment Payment Period shall be computed on the basis of a 360-day year of twelve 30-day months. If an Installment Payment is payable for any period shorter than a full Installment Payment Period, such Installment Payment shall be computed on the basis of the actual number of days elapsed per 30-day month. Furthermore, if any date on which an Installment Payment is payable is not a Business Day, then payment of the Installment Payment on such date shall be made on the next succeeding day that is a Business Day, and without any interest or other payment in respect of any such delay. Installment Payments shall be paid to the Person in whose name the Note is registered, with limited exceptions as provided in the Indenture, at the close of business on the Business Day immediately preceding the related Installment Payment Date (each, a “**Regular Record Date**”). If the Notes do not remain in book-entry only form, the Company shall have the right to elect that each Regular Record Date shall be each January 1, April 1, July 1 and October 1 immediately preceding the relevant Installment Payment Date by giving 10 days’ advance written notice to the Trustee and the Holders. Installment Payments shall be payable (x) in the case of any Certificated Note, at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, The City of New York; *provided, however*, that payment of Installment Payments may be made at the option of the Company by check mailed to the registered Holder at such address as shall appear in the Security Register or (y) in the case of any Global Note, by wire transfer in immediately available funds to the account of the Depository or its nominee or otherwise in accordance with applicable procedures of the Depository.

* Include only if a Global Note.

** Include only if not a Global Note.

This Note shall not be entitled to any benefit under the Indenture hereinafter referred to or be valid or obligatory for any purpose until the Certificate of Authentication shall have been manually signed by or on behalf of the Trustee.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

[SIGNATURES ON THE FOLLOWING PAGE]

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IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated: _____

[CORPORATE SEAL]

COLFAX CORPORATION

By: _____

Name:

Title:

By: _____

Name:

Title:

CERTIFICATE OF AUTHENTICATION

U.S. Bank National Association, as Trustee, certifies that this is one of the Securities of the series designated herein referred to in the within mentioned Indenture.

Dated: _____

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____

Authorized Signatory

COLFAX CORPORATION

6.50% Senior Amortizing Notes due 2022

This Note is one of a duly authorized series of Securities of the Company designated as its 6.50% Senior Amortizing Notes due 2022 (herein sometimes referred to as the “Notes”), issued under the Indenture, dated as of January 11, 2019, between the Company and U.S. Bank National Association, as trustee (the “Trustee,” which term includes any successor trustee under the Indenture) (including any provisions of the Trust Indenture Act that are deemed incorporated therein) (the “Base Indenture”), as supplemented by the First Supplemental Indenture, dated as of January 11, 2019 (the “Supplemental Indenture”), between the Company and the Trustee (the Base Indenture, as supplemented by the Supplemental Indenture, the “Indenture”), to which Indenture reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders. The terms of other series of Securities issued under the Base Indenture may vary with respect to interest rates, issue dates, maturity, redemption, repayment, currency of payment and otherwise as provided in the Base Indenture. The Base Indenture further provides that securities of a single series may be issued at various times, with different maturity dates and may bear interest at different rates. This series of Securities is limited in aggregate initial principal amount as specified in the Supplemental Indenture.

Each Installment Payment shall constitute a payment of interest (at a rate of 6.50% per annum) and a partial repayment of principal on the Notes, allocated with respect to each Note as set forth in the schedule below:

<u>Installment Payment Date</u>	<u>Amount of Principal</u>	<u>Amount of Interest</u>
April 15, 2019	\$1.2365	\$ 0.2649
July 15, 2019	\$1.2039	\$ 0.2336
October 15, 2019	\$1.2235	\$ 0.2140
January 15, 2020	\$1.2434	\$ 0.1941
April 15, 2020	\$1.2636	\$ 0.1739
July 15, 2020	\$1.2841	\$ 0.1534
October 15, 2020	\$1.3050	\$ 0.1325
January 15, 2021	\$1.3262	\$ 0.1113
April 15, 2021	\$1.3477	\$ 0.0898
July 15, 2021	\$1.3696	\$ 0.0679
October 15, 2021	\$1.3919	\$ 0.0456
January 15, 2022	\$1.4145	\$ 0.0230

The Notes shall not be subject to redemption at the option of the Company. However, a Holder shall have the right to require the Company to repurchase some or all of its Notes for cash at the Repurchase Price per Note and on the Repurchase Date, upon the occurrence of certain events and subject to the conditions set forth in the Indenture.

This Note is not entitled to the benefit of any sinking fund. The Indenture contains provisions for satisfaction and discharge, legal defeasance and covenant defeasance of this Note upon compliance by the Company with certain conditions set forth therein, which provisions apply to this Note.

If an Event of Default with respect to the Notes shall occur and be continuing, then (unless no declaration of acceleration or notice is required for such Event of Default) either the Trustee or the Holders of not less than 25% in principal amount of the Notes then outstanding may declare the aggregate principal amount of the Notes, and all interest accrued thereon, to be due and payable immediately, in the manner, subject to the conditions and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee, with the consent of the Holders of not less than a majority in principal amount of the Notes at the time outstanding, to execute supplemental indentures for certain purposes as described therein.

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 Repurchase Price, if applicable, of and all Installment Payments on this Note at the time, place and rate, and in the coin or currency, herein and in the Indenture prescribed.

The Notes are originally being issued as part of the 5.75% Tangible Equity Units (the “**Units**”) issued by the Company pursuant to that certain Purchase Contract Agreement, dated as of January 11, 2019, between the Company and U.S. Bank National Association, as Purchase Contract Agent, as Trustee and as attorney-in-fact for the holders of Purchase Contracts from time to time (the “**Purchase Contract Agreement**”). Holders of the Units have the right to separate such Units into their constituent parts, consisting of Separate Purchase Contracts (as defined in the Purchase Contract Agreement) and Separate Notes, during the times, and under the circumstances, described in the Purchase Contract Agreement. Following separation of any Unit into its constituent Separate Note and Separate Purchase Contract, the Separate Notes are transferable independently from the Separate Purchase Contracts. In addition, Separate Notes can be recombined with Separate Purchase Contracts to recreate Units, as provided for in the Purchase Contract Agreement. Reference is hereby made to the Purchase Contract Agreement for a more complete description of the terms thereof applicable to the Units.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note shall be registered on the Security Register of the Company, upon due presentation of this Note for registration of transfer at the office or agency of the Company in the Borough of Manhattan, The City of New York, duly endorsed by, or accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder hereof or by his attorney duly authorized in writing, and thereupon the Company shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Note or Notes in authorized denominations and for a like aggregate principal amount.

The Notes are initially issued in registered, global form without coupons in denominations equal to \$15.6099 initial principal amount and integral multiples in excess thereof.

The Company or Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer of this Note. No service charge shall be made for any such transfer or for any exchange of this Note as contemplated by the Indenture.

The Company, the Trustee and any agent of the Company or the Trustee may deem and treat the Person in whose name this Note is registered upon the Security Register for the Notes as the absolute owner of this Note (whether or not this Note shall be overdue and notwithstanding any notice of ownership or writing thereon made by anyone other than the Registrar) for the purpose of receiving payment of or on account of the principal of and, subject to the provisions of the Indenture, interest on this Note and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or the Trustee shall be affected by any notice to the contrary.

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

Capitalized terms used but not defined in this Note shall have the meanings ascribed to such terms in the Indenture.

No recourse shall be had for the payment of any Installment Payment on this Note, or for any claim based hereon, or upon any obligation, covenant or agreement of the Company in the Indenture, against any incorporator, stockholder, officer or director, past, present or future of the Company or of any predecessor or successor, either directly or through the Company or any predecessor or successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment of penalty or otherwise; and all such personal liability is expressly released and waived as a condition of, and as part of the consideration for, the issuance of this Note.

The Company and each Beneficial Holder agrees, for United States federal income tax purposes, to treat the Notes as indebtedness of the Company.

In the event of any inconsistency between the provisions of this Note and the provisions of the Indenture, the Indenture shall prevail.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Note to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

agent to transfer this Note on the books of the Company. The agent may substitute another to act for him or her.

Date: _____

Signature

Signature Guarantee: _____

(Sign exactly as your name appears on the other side of this Note)

SIGNATURE GUARANTEE

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

By: _____
Name:
Title:

as Trustee

By: _____
Name:
Title:

Attest

By: _____
Name:
Title:

FORM OF REPURCHASE NOTICE

TO: COLFAX CORPORATION

U.S. BANK NATIONAL ASSOCIATION, as Trustee

The undersigned registered Holder hereby irrevocably acknowledges receipt of a notice from Colfax Corporation (the “**Company**”) regarding the right of Holders to elect to require the Company to repurchase the Notes and requests and instructs the Company to pay, for each Note designated below, the Repurchase Price for such Notes (determined as set forth in the Indenture), in accordance with the terms of the Indenture and the Notes, to the registered holder hereof. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. The Notes shall be repurchased by the Company as of the Repurchase Date pursuant to the terms and conditions specified in the Indenture.

Dated: _____

Signature: _____

NOTICE: The above signature of the Holder hereof must correspond with the name as written upon the face of the Notes in every particular without alteration or enlargement or any change whatever.

Notes Certificate Number (if applicable): _____

Number of Notes to be repurchased (if less than all, must be one Note or integral multiples in excess thereof): _____

Social Security or Other Taxpayer Identification Number: _____

SCHEDULE A*

[SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE]

The initial number of Notes evidenced by this Global Note is []. The following increases or decreases in this Global Note have been made:

<u>Date</u>	<u>Amount of decrease in number of Notes evidenced hereby</u>	<u>Amount of increase in number of Notes evidenced hereby</u>	<u>Number of Notes evidenced hereby following such decrease (or increase)</u>	<u>Signature of authorized officer of Trustee</u>
-------------	---	---	---	---

* Include only if a Global Note.

[FORM OF FACE OF PURCHASE CONTRACT]

[THIS SECURITY IS A GLOBAL PURCHASE CONTRACT WITHIN THE MEANING OF THE PURCHASE CONTRACT AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY OR A SUCCESSOR DEPOSITARY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN CERTIFICATED FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (THE “**DEPOSITARY**”) TO THE NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY 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 DEPOSITARY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]*

* Include only if a Global Purchase Contract.

COLFAX CORPORATION

PURCHASE CONTRACTS

CUSIP No. 194014 403
ISIN No. US1940144033

No. [Initial]* Number of Purchase Contracts: _____

This Purchase Contract certifies that [CEDE & CO., as nominee of The Depository Trust Company]* []**, or its registered assigns (the “**Holder**”) is the registered owner of the number of Purchase Contracts set forth above[, which number may from time to time be reduced or increased as set forth on Schedule A hereto, as appropriate, in accordance with the terms of the Purchase Contract Agreement (as defined below), but which number of Purchase Contracts, taken together with the number of all other Outstanding Purchase Contracts, shall not exceed 4,600,000 Purchase Contracts at any time]*.

Each Purchase Contract consists of the rights of the Holder under such Purchase Contract with the Company. All capitalized terms used herein which are defined in the Purchase Contract Agreement (as defined on the reverse hereof) have the meaning set forth therein.

Each Purchase Contract evidenced hereby obligates the Company to deliver to the Holder of this Purchase Contract on the Mandatory Settlement Date a number shares of Common Stock, \$0.001 par value (“**Common Stock**”), of the Company equal to the Settlement Rate, unless such Purchase Contract has settled or been redeemed prior to the Mandatory Settlement Date, all as provided in the Purchase Contract Agreement and more fully described on the reverse hereof.

Reference is hereby made to the further provisions set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

[SIGNATURES ON THE FOLLOWING PAGE]

* Include only if a Global Purchase Contract.

** Include only if not a Global Purchase Contract.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

COLFAX CORPORATION

By: _____
Name:
Title:

Dated: _____

REGISTERED HOLDER(S) (as to obligations of such holder(s) under the Purchase Contracts evidenced hereby)

By: U.S. BANK NATIONAL ASSOCIATION, not individually but solely as Attorney-in-Fact of such holder(s)

By: _____

Name:

Title:

PURCHASE CONTRACT CERTIFICATE OF AUTHENTICATION OF

PURCHASE CONTRACT AGENT

This is one of the Purchase Contracts referred to in the within-mentioned Purchase Contract Agreement.

U.S. BANK NATIONAL ASSOCIATION, as Purchase
Contract Agent

By: _____
Authorized Signatory

Dated: _____

Each Purchase Contract evidenced hereby is governed by a Purchase Contract Agreement, dated as of January 11, 2019 (as may be supplemented from time to time, the “**Purchase Contract Agreement**”), between Colfax Corporation, a Delaware corporation (the “**Company**”) and U.S. Bank National Association, as Purchase Contract Agent (including its successors hereunder, the “**Purchase Contract Agent**”), as Trustee under the Indenture and as attorney-in-fact for the Holders of Purchase Contracts from time to time. Reference is hereby made to the Purchase Contract Agreement and supplemental agreements thereto for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Purchase Contract Agent, the Company and the Holders and of the terms upon which the Purchase Contracts are, and are to be, executed and delivered.

Each Purchase Contract evidenced hereby obligates the Company to deliver to the Holder of this Purchase Contract, on the Mandatory Settlement Date, a number of shares of Common Stock equal to the Settlement Rate, unless such Purchase Contract has settled or been redeemed prior to the Mandatory Settlement Date, in either case, pursuant to the terms of the Purchase Contract Agreement.

No fractional shares of Common Stock will be issued upon settlement or redemption of Purchase Contracts, as provided in Section 4.13 of the Purchase Contract Agreement.

The Purchase Contracts are issuable only in registered form and only in denominations of a single Purchase Contract and any integral multiple thereof. The transfer of any Purchase Contract will be registered and Purchase Contracts may be exchanged as provided in the Purchase Contract Agreement.

The Purchase Contracts are initially being issued as part of the 5.75% Tangible Equity Units (the “**Units**”) issued by the Company pursuant to the Purchase Contract Agreement. Holders of the Units have the right to separate such Units into their constituent parts, consisting of Separate Notes and Separate Purchase Contracts, during the times, and under the circumstances, described in the Purchase Contract Agreement. Following separation of any Unit into its constituent parts, the Separate Purchase Contracts are transferable independently from the Separate Notes. In addition, Separate Purchase Contracts can be recombined with Separate Notes to recreate Units, as provided for in the Purchase Contract Agreement.

The Holder of this Purchase Contract, by its acceptance hereof, authorizes the Purchase Contract Agent to enter into and perform the Purchase Contract Agreement on its behalf as its attorney-in-fact and agrees to be bound by the terms and provisions thereof.

Subject to certain exceptions set forth in the Purchase Contract Agreement, the provisions of the Purchase Contract Agreement may be amended with the consent of the Holders of a majority of the Purchase Contracts.

The Purchase Contracts shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company, the Purchase Contract Agent, and any agent of the Company or the Purchase Contract Agent, may treat the Person in whose name this Purchase Contract is registered as the owner of the Purchase Contracts, evidenced hereby, for the purpose of performance of the Purchase Contracts evidenced by such Purchase Contracts and for all other purposes whatsoever, and neither the Company nor the Purchase Contract Agent, nor any agent of the Company or the Purchase Contract Agent, shall be affected by notice to the contrary.

The Purchase Contracts shall not entitle the Holder to any of the rights of a holder of the Common Stock or other Exchange Property, except as provided by the Purchase Contract Agreement.

Each Purchase Contract (whether or not included in a Unit) is a security governed by Article 8 of the Uniform Commercial Code as in effect in the State of New York on the date hereof.

Unless a conformed copy of the Purchase Contract Agreement has been filed on the EDGAR system of the U.S. Securities and Exchange Commission, a copy of the Purchase Contract Agreement will be available for inspection at the offices of the Company.

In the event of any inconsistency between the provisions of this Purchase Contract and the provisions of the Purchase Contract Agreement, the Purchase Contract Agreement shall prevail.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM:	as tenants in common	
UNIF GIFT MIN ACT:	Custodian	
	(cust)	(minor)
	Under Uniform Gifts to Minors	
	Act of _____	
TENANT:	as tenants by the entireties	
JT TEN:	as joint tenants with rights of survivorship and	
	not as tenants in common	

Additional abbreviations may also be used though not in the above list.

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

(Please insert Social Security or Taxpayer I.D. or other Identifying Number of Assignee)

(Please Print or Type Name and Address Including Postal Zip Code of Assignee)

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

DATED: _____

Signature

Notice: The signature to this assignment must correspond with the name as it appears upon the face of the within Purchase Contracts in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee: _____

SETTLEMENT INSTRUCTIONS

The undersigned Holder directs that a certificate for shares of Common Stock or other securities, as applicable, deliverable upon settlement or redemption of the number of Purchase Contracts evidenced by this Purchase Contract be registered in the name of, and delivered, together with a check in payment for any fractional share (or cash included in the Redemption Amount, if applicable), to the undersigned at the address indicated below unless a different name and address have been indicated below. If shares of Common Stock or other securities, as applicable, are to be registered in the name of a Person other than the undersigned, the undersigned will pay any transfer tax payable incidental thereto, as provided in the Purchase Contract Agreement.

Dated: _____

Signature

Signature Guarantee: _____
(if assigned to another Person)

If shares are to be registered in the name of and delivered to (or cash is paid to) a Person other than the Holder, please (i) print such Person's name and address and (ii) provide a guarantee of your signature:

Name
Address

Name
Address

Social Security or other Taxpayer Identification Number, if any

ELECTION TO SETTLE EARLY

The undersigned Holder of this Purchase Contract hereby irrevocably exercises the option to effect Early Settlement (which Early Settlement may, as applicable, be deemed to be in connection with a Fundamental Change pursuant to Section 4.07 of the Purchase Contract Agreement) in accordance with the terms of the Purchase Contract Agreement with respect to the Purchase Contracts evidenced by this Purchase Contract as specified below. The undersigned Holder directs that a certificate for shares of Common Stock or other securities, as applicable, deliverable upon such Early Settlement be registered in the name of, and delivered, together with a check in payment for any fractional share and any Purchase Contract representing any Purchase Contracts evidenced hereby as to which Early Settlement is not effected, to the undersigned at the address indicated below unless a different name and address have been indicated below. If shares of Common Stock or other securities, as applicable, are to be registered in the name of a Person other than the undersigned, the undersigned will pay any documentary, stamp or similar issue or transfer tax payable incident thereto, as provided in the Purchase Contract Agreement.

Dated: _____

Signature

Signature Guarantee: _____

Number of Purchase Contracts evidenced hereby as to which Early Settlement is being elected:

If shares of Common Stock or Purchase Contracts are to be registered in the name of and delivered to a Person other than the Holder, please print such Person's name and address:

REGISTERED HOLDER

Please print name and address of Registered Holder:

Name
Address

Name
Address

Social Security or other Taxpayer Identification Number, if any

SCHEDULE A*

[SCHEDULE OF INCREASES OR DECREASES
IN THE PURCHASE CONTRACT]

The initial number of Purchase Contracts evidenced by this certificate is []. The following increases or decreases in this certificate have been made.

<u>Date</u>	<u>Amount of increase in number of Purchase Contracts evidenced hereby</u>	<u>Amount of decrease in number of Purchase Contracts evidenced hereby</u>	<u>Number of Purchase Contracts evidenced hereby following such decrease or increase</u>	<u>Signature of authorized signatory of Purchase Contract Agent</u>
-------------	--	--	--	---

* Include only if a Global Purchase Contract.

Colfax Corporation

INDENTURE

Dated as of January 11, 2019

U.S. Bank National Association

as Trustee

Senior Debt Securities

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Indenture dated as of January 11, 2019, between Colfax Corporation (the “*Company*”) and U.S. Bank National Association, as trustee (the “*Trustee*”).

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders (as defined below) of the Securities (as defined below) issued under this Indenture.

ARTICLE I.
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1. Definitions.

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

“*Agent*” means any Registrar, Paying Agent or Transfer Agent or any other agent appointed pursuant to this Indenture.

“*Board of Directors*” means the Board of Directors of the Company, or any duly authorized committee thereof.

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

“*Business Day*” means, with respect to any Series, unless otherwise specified in the terms of such Securities established in accordance with Section 2.1 by Board Resolution, Officer’s Certificate or supplemental indenture for a particular Series, any day except a Saturday, Sunday or a Legal Holiday in the Borough of Manhattan, The City of New York on which Federal or State banking institutions are authorized or required by law, regulation or executive order to close.

“*Capital Stock*” means (1) in the case of a corporation, corporate stock; (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

“*Certificated Securities*” means definitive Securities in registered non-global certificated form.

“*Company*” means Colfax Corporation until a successor replaces it and thereafter means the successor.

“*Company Order*” or “*Company Request*” means a written order signed in the name of the Company by one of the Company’s Officers.

“*Consolidated Net Worth*” means the amount of total stockholders’ equity shown in the Company’s most recent quarterly consolidated statement of financial position.

“*Corporate Trust Office*” means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which, as of the date hereof is the address set forth in Section 10.1, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

“*Default*” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“*Depository*” means, with respect to the Securities of any Series issuable or issued in whole or in part in the form of one or more Global Securities, the Person designated as Depository for such Series by the Company which Depository shall be a clearing agency registered under the Exchange Act; and if at any time there is more than one such Person, “*Depository*” as used with respect to the Securities of any Series shall mean the Depository with respect to the Securities of such Series.

“*Discount Security*” means any Security that provides for an amount less than the stated principal amount thereof to be due and payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.2.

“*Dollars*” or “\$” means the currency of the United States of America.

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

“*GAAP*” means accounting principles generally accepted in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time.

“*Global Security*” or “*Global Securities*” means a Security or Securities, as the case may be, in the form established pursuant to Section 2.2 evidencing all or part of a Series of Securities, issued to the Depository for such Series or its nominee, and registered in the name of such Depository or nominee.

“*Government Obligations*” means securities which are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, and which in the case of (i) and (ii) are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of any such Government Obligation held by such custodian for the account of the holder of a depository receipt, *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian with respect to the Government Obligation evidenced by such depository receipt.

“*Holder*” or “*Securityholder*” means a Person in whose name a Security is registered in the register maintained by the Registrar.

“*Indenture*” means this Indenture as amended or supplemented from time to time and shall include the form and terms of particular Series of Securities established as contemplated hereunder.

“*Issue Date*” means, with respect to any Security, the date of original issuance of such Security.

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

“*Mortgage*” means and includes any mortgage, pledge, lien, security interest, conditional sale or other title retention agreement or other similar encumbrance.

“*Non-recourse Debt*” means indebtedness as to which (a) neither the Company, nor any of its Subsidiaries (x) provides credit support of any kind or (y) is directly or indirectly liable as a guarantor or otherwise and (b) as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets of the Company or any of its Subsidiaries.

“*Officer*” means the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, President, any Vice-President, the Treasurer, a Director, the Chairman, the Secretary, any Assistant Treasurer or any Assistant Secretary of the Company.

“*Officer’s Certificate*” means a certificate signed by an Officer of the Company.

“*Opinion of Counsel*” means a written opinion of legal counsel who is acceptable to the Trustee. The counsel may be a direct or indirect employee of or counsel to the Company.

“*Periodic Offering*” means an offering of Securities of a Series from time to time, during which any or all of the specific terms of the Securities, including the rate or rates of interest, if any, thereon, the maturity or maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company or its agents upon the issuance of such Securities in accordance with the terms of the relevant supplemental indenture.

“*Person*” means any individual, corporation, partnership, limited liability company, association, joint venture, trust, joint stock company or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“*principal*” of a Security means the principal of the Security plus, when appropriate, the premium, if any, on, and any Additional Amounts with respect to, the Security.

“*Responsible Officer*” means any officer of the Trustee in its Corporate Trust Office directly responsible for the administration of this Indenture or, with respect to a particular corporate trust matter, any other officer to whom any corporate trust matter is referred because of his or her knowledge of and familiarity with a particular subject.

“*Restricted Property*” means any real property, manufacturing plant, warehouse, office building or other physical facility, or any item of marine, transportation or construction equipment or other like depreciable assets of the Company or any of its Restricted Subsidiaries, whether owned on or acquired after the Issue Date of the Securities of any Series, unless, in the opinion of the Board of Directors, such plant or facility or other asset is not of material importance to the total business conducted by the Company and its Restricted Subsidiaries taken as a whole.

“*Restricted Security*”, with respect to any Series of Securities, means a Security of such Series, unless or until it has been (i) effectively registered under the Securities Act and disposed of in accordance with a registration statement with respect to such Series or (ii) distributed to the public pursuant to Rule 144 under the Securities Act or any similar provision then in force.

“*Restricted Subsidiary*” means any Subsidiary of the Company which owns a Restricted Property.

“*SEC*” means the Securities and Exchange Commission.

“*Securities*” means the debentures, notes or other debt instruments of the Company of any Series authenticated and delivered under this Indenture.

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

“*Series*” or “*Series of Securities*” means each series of Securities of the Company created pursuant to Sections 2.1 and 2.2 hereof.

“*Stated Maturity*” when used with respect to any Security, means the date specified in such Security as the fixed date on which the principal of such Security or interest is due and payable.

“*Subsidiary*” means, with respect to any specified Person, (a) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of

the other subsidiaries of that Person (or a combination thereof); and (b) any partnership or limited liability company of which (x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (y) such Person or any subsidiary of such Person is a controlling general partner or otherwise controls such entity.

“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, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any Series shall mean the Trustee with respect to Securities of that Series.

“Unrestricted Securities”, with respect to any Series of Securities, means a Security (i) effectively registered under the Securities Act and disposed of in accordance with a registration statement with respect to such Series or (ii) distributed to the public pursuant to Rule 144 under the Securities Act or any similar provision then in force.

Section 1.2. Other Definitions.

<u>TERM</u>	<u>DEFINED IN SECTION</u>
“Additional Amounts”	4.6(a)
“Bankruptcy Law”	6.1
“Company Tax Jurisdiction”	4.6(a)
“covenant defeasance”	8.1(b)
“Custodian”	6.1
“Event of Default”	6.1
“Judgment Currency”	10.14
“legal defeasance”	8.1(c)
“Legal Holiday”	10.6
“New York Banking Day”	10.14
“Paying Agent”	2.4
“Process Agent”	10.16
“Registrar”	2.4
“Related Proceeding”	10.16
“Required Currency”	10.14
“Taxes”	4.6(a)
“Tax Redemption Date”	3.10
“Tax Jurisdiction”	4.6(a)
“TIA”	7.10
“Transfer Agent”	2.4

Section 1.3. Rules of Construction.

Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) “or” is not exclusive and “including” means including without limitation;
- (d) words in the singular include the plural, and in the plural include the singular; and
- (e) provisions apply to successive events and transactions.

ARTICLE II.
THE SECURITIES

Section 2.1. Issuable in Series.

The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more Series. All Securities of a Series shall be identical except as may be set forth in, or pursuant to a Board Resolution, Officer’s Certificate or supplemental indenture establishing the terms of such Series of Securities.

Section 2.2. Establishment of Terms of Series of Securities.

At or prior to the issuance of any Securities within a Series, the following shall be established (as to the Series generally, in the case of Subsection 2.2.1 and either as to such Securities within the Series or as to the Series generally in the case of Subsections 2.2.2 through 2.2.28) by or pursuant to a Board Resolution, Officer’s Certificate or supplemental indenture:

2.2.1. the title of the Series of Securities (which shall distinguish the Securities of that particular Series from the Securities of any other Series);

2.2.2. 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 Section 2.7, 2.8, 2.11, 3.6 or 9.6);

2.2.3. the date or dates on which the principal and premium, if any, of the Securities of the Series is payable;

2.2.4. the rate or rates, which may be fixed or variable, at which the Securities of the Series shall bear interest or the manner of calculation of such rate or rates, if any, including any procedures to vary or reset such rate or rates, and the basis upon which interest will be calculated if other than that of a 360-day year or twelve 30-day months;

2.2.5. the date or dates from which interest shall accrue, the dates on which such interest will be payable or the manner of determination of such dates, and the record date for the determination of holders to whom interest is payable on any such dates;

2.2.6. the place or places where the principal of and interest, if any, on the Securities of the Series shall be payable, where the Securities of such Series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company with respect to the Securities of such Series and this Indenture may be served, and the method of such payment, if by wire transfer, mail or other means if other than as set forth in this Indenture;

2.2.7. the right, if any, to extend the interest payment periods or defer the payment of interest and the duration of such extension or deferral;

2.2.8. if applicable, the period or periods within which, the price or prices at which and the terms and conditions upon which the Securities of the Series may be redeemed, in whole or in part, at the option of the Company if other than as set forth in this Indenture;

2.2.9. the obligation, if any, of the Company to redeem or purchase, if other than as set forth herein, the Securities of the Series pursuant to any sinking fund or analogous provisions, including payments made in cash in anticipation of future sinking fund obligations, or at the option of a Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the Series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;

2.2.10. the terms of any repurchase or remarketing rights;

2.2.11. if other than denominations of \$2,000 or integral multiples of \$1,000 in excess thereof, the denominations in which the Securities of the Series shall be issuable;

2.2.12. the forms of the Securities of the Series including the form of the Trustee's certificate of authentication for such Series;

2.2.13. any trustees, authenticating agents or paying agents with respect to the Securities of the Series, if different from those set forth in this Indenture;

2.2.14. if the Securities of the Series shall be issued in whole or in part in the form of a Global Security or Securities, the type of Global Security to be issued; the terms and conditions, if different from those contained in this Indenture, upon which such Global Security or Securities may be exchanged in whole or in part for other individual Securities in definitive registered form; the Depositary for such Global Security or Securities; and the form of any legend or legends to be borne by any such Global Security or Securities in addition to or in lieu of the legend referred to in Section 2.14.2;

2.2.15. any provisions granting special rights to Holders when a specified event occurs;

- 2.2.16. if the amount of principal of or any premium or interest on Securities of any Series may be determined with reference to an index or pursuant to a formula, the manner in which such amounts will be determined;
- 2.2.17. any special tax implications of the Securities, including provisions for original issue discount securities, if offered;
- 2.2.18. whether and upon what terms Securities of the Series may be defeased if different from the provisions set forth in this Indenture;
- 2.2.19. with regard to the Securities of any Series that do not bear interest, the dates for certain required reports to the Trustee;
- 2.2.20. whether the Securities of any Series will be issued as Unrestricted Securities or Restricted Securities, and, if issued as Restricted Securities, the rule or regulation promulgated under the Securities Act in reliance on which they will be sold;
- 2.2.21. any guarantees on the Securities of the Series;
- 2.2.22. the currency or currencies in which payment of the principal of, premium, if any, and interest on, the Securities of the Series shall be payable;
- 2.2.23. if the principal amount payable at the Stated Maturity of Securities of the Series will not be determinable as of any one or more dates prior to such Stated Maturity, the amount which will be deemed to be such principal amount as of any such date for any purpose, including the portion of the principal amount thereof that will be due and payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.2 or upon any maturity other than the Stated Maturity or that will be deemed to be outstanding as of any such date, or, in any such case, the manner in which such deemed principal amount is to be determined;
- 2.2.24. the provisions, if any, relating to any security provided for the Securities of the Series;
- 2.2.25. any additional restrictive covenants or Events of Default that will apply to the Securities of the Series, or any changes to the restrictive covenants set forth in Article IV or the Events of Default set forth in Section 6.01 that will apply to the Securities of the Series, which may consist of establishing different terms or provisions from those set forth in Article IV or Section 6.01 or eliminating any such restrictive covenant or Event of Default with respect to the Securities of the Series;
- 2.2.26. any Depositaries, interest rate calculation agents, exchange rate calculation agents or other agents with respect to Securities of such Series if other than those appointed herein;
- 2.2.27. whether the Securities of the Series will be convertible into or exchangeable for other Securities, common shares or other securities of any kind of the Company or another obligor, and, if so, the terms and conditions upon which such Securities will be so convertible or exchangeable, including the initial conversion or exchange price or rate or the

method of calculation, how and when the conversion price or exchange ratio may be adjusted, whether conversion or exchange is mandatory, at the option of the holder or at the Company's option, the conversion or exchange period, and any other provision in addition to or in lieu of those described herein; and

2.2.28. any and all additional, eliminated or changed terms that shall apply to the Securities of the Series, including any terms that may be required by or advisable under United States laws or regulations, including the Securities Act and the rules and regulations promulgated thereunder, or advisable in connection with the marketing of Securities of that Series.

All Securities of any one Series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution, Officer's Certificate or supplemental indenture referred to above.

Section 2.3. Execution and Authentication.

An Officer of the Company shall sign the Securities for the Company by manual or facsimile signature.

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

A Security shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee shall at any time, and from time to time, authenticate Securities for original issue in the principal amount provided in the Board Resolution, Officer's Certificate or supplemental indenture, upon receipt by the Trustee of a Company Order. Each Security shall be dated the date of its authentication unless otherwise provided by the relevant Board Resolution, Officer's Certificate or supplemental indenture.

Notwithstanding the provisions of Section 2.2 and the preceding paragraph, in the case of Securities offered in a Periodic Offering, the Trustee shall authenticate and deliver such Securities from time to time in accordance with a Company Order or such other procedures acceptable to the Trustee as may be specified by or pursuant to a supplemental indenture or the written order of the Company delivered to the Trustee prior to the time of the first authentication of Securities of such Series.

The aggregate principal amount of Securities of any Series outstanding at any time may not exceed any limit upon the maximum principal amount for such Series set forth in the Board Resolution, Officer's Certificate or supplemental indenture delivered pursuant to Section 2.2.

Prior to the issuance of Securities of any Series, the Trustee shall have received and (subject to Section 7.2) shall be fully protected in relying on: (a) the Board Resolution, Officer's Certificate or supplemental indenture establishing the form of the Securities of that Series or of Securities within that Series and the terms of the Securities of that Series or of Securities within

that Series, (b) an Officer's Certificate complying with Section 10.4, and (c) an Opinion of Counsel complying with Section 10.4. With respect to Securities of a Series subject to a Periodic Offering, the Trustee conclusively may rely, as to the authorization by the Company of any of such Securities, the forms and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the written order of the Company, Opinion of Counsel, Officer's Certificate and other documents delivered pursuant to this Section 2.3 at or prior to the time of the first authentication of Securities of such Series unless and until such written order, Opinion of Counsel, Officer's Certificate or other documents have been superseded or revoked, and written notice thereof is provided to Trustee, or expire by their terms.

The Trustee shall have the right to decline to authenticate and deliver any Securities of such Series: (a) if the Trustee, being advised by counsel, determines that such action may not be taken lawfully; or (b) if the Trustee in good faith by its board of directors or trustees, executive committee or a committee of Responsible Officers shall determine that such action would expose the Trustee to personal liability.

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

The Trustee's certificate of authentication shall be in substantially the following form:

"This is one of the Securities designated therein described in the within-mentioned Indenture.

U.S. Bank National Association,
as Trustee

By: _____
Authorized Signatory"

Section 2.4. Registrar, Paying Agent and Transfer Agent.

The Company will maintain one or more paying agents (each, a "*Paying Agent*") for the Securities in the Borough of Manhattan, City of New York. The Company hereby appoints U.S. Bank National Association as the initial Paying Agent, and thereafter "*Paying Agent*" shall mean or include each Person who is then a Paying Agent hereunder, and if at any time there is more than one such Person, "*Paying Agent*" as used with respect to the Securities of any Series shall mean the Paying Agent with respect to Securities of that Series. The Company, upon written notice to the Trustee accompanied by an Officer's Certificate, may appoint one or more paying agents, other than the Trustee, for all or any series of the Securities. If the Company fails to appoint or maintain another entity as paying agent, the Trustee shall act as such. The Company or any of its Subsidiaries, upon notice to the Trustee, may act as paying agent.

The Company will maintain one or more registrars (each, a “*Registrar*”) for the Securities in the Borough of Manhattan, City of New York. The Company hereby appoints U.S. Bank National Association as the initial Registrar, and thereafter “*Registrar*” shall mean or include each Person who is then a Registrar hereunder, and if at any time there is more than one such Person, “*Registrar*” as used with respect to the Securities of any Series shall mean the Registrar with respect to Securities of that Series. The Company, upon written notice to the Trustee accompanied by an Officer’s Certificate, may appoint one or more registrars, other than the Trustee, for all or any series of the Securities. If the Company fails to appoint or maintain another entity as registrar, the Trustee shall act as such. The Company or any of its Subsidiaries, upon notice to the Trustee, may act as registrar.

The Company will also maintain a transfer agent (each, a “*Transfer Agent*”) for the Securities in the Borough of Manhattan, City of New York. The Company hereby appoints U.S. Bank National Association as the initial Transfer Agent, and thereafter “*Transfer Agent*” shall mean or include each Person who is then a Transfer Agent hereunder, and if at any time there is more than one such Person, “*Transfer Agent*” as used with respect to the Securities of any Series shall mean the Transfer Agent with respect to Securities of that Series. The Company, upon written notice to the Trustee accompanied by an Officer’s Certificate, may appoint one or more transfer agents, other than the Trustee, for all or any series of the Securities. If the Company fails to appoint or maintain another entity as transfer agent, the Trustee shall act as such. The Company or any of its Subsidiaries, upon notice to the Trustee, may act as transfer agent.

The Company may change any Paying Agent, Registrar or Transfer Agent for its Securities without prior notice to the Holders.

Section 2.5. Paying Agent to Hold Money in Trust.

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

Section 2.6. Securityholder Lists.

The Trustee, in its capacity as Registrar, shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders of each Series of Securities. If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least ten days before each interest payment date and at such other times as the Trustee may request in writing a list, in such form and as of such date as the Trustee may reasonably require, of the names and addresses of Securityholders of each Series of Securities.

Section 2.7. Transfer and Exchange

2.7.1. Securities of any series may be exchanged upon presentation thereof at the Corporate Trust Office of the Trustee (except as otherwise specified pursuant to Section 2.2) for other Securities of such series of authorized denominations, and for a like aggregate principal amount, upon payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, all as provided in this Section 2.7. In respect of any Securities so surrendered for exchange, the Company shall execute, the Trustee shall authenticate and such office or agency shall deliver in exchange therefor the Security or Securities of the same series that the Securityholder making the exchange shall be entitled to receive, bearing numbers not contemporaneously outstanding.

2.7.2. The Registrar shall keep, or cause to be kept, at an office or agency designated for such purpose, a register or registers (herein referred to as the "*Security Register*") in which, subject to such reasonable regulations as it may prescribe, the Company shall register the Securities and the transfers of Securities as in this Article provided and which at all reasonable times shall be open for inspection by the Trustee.

2.7.3. Upon surrender for transfer of any Security at the Corporate Trust Office of the Trustee (except as otherwise specified pursuant to Section 2.2), the Company shall execute, the Trustee shall authenticate and such office or agency shall deliver in the name of the transferee or transferees a new Security or Securities of the same series as the Security presented for a like aggregate principal amount.

2.7.4. All Securities presented or surrendered for exchange or registration of transfer, as provided in this Section, shall be accompanied (if so required by the Company or the Registrar) by a written instrument or instruments of transfer, in form satisfactory to the Company or the Registrar, duly executed by the registered holder or by such holder's duly authorized attorney in writing.

2.7.5. No service charge shall be made for any exchange or registration of transfer of Securities, or issue of new Securities in case of partial redemption of any series, but the Company and the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, other than exchanges pursuant to Section 2.11, Section 3.6 and Section 9.6 not involving any transfer.

2.7.6. The Company shall not be required (i) to issue, exchange or register the transfer of any Securities during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of less than all the outstanding Securities of the same Series and ending at the close of business on the day of such mailing, nor (ii) to register the transfer or exchange of any Securities of any series or portions thereof called for redemption.

2.7.7. The provisions of this Section 2.7 are, with respect to any Global Security, subject to Section 2.14 hereof.

2.7.8. None of the Trustee, Registrar or Paying Agent shall be responsible for ascertaining whether any transfer complies with, or for otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, applicable state securities laws, ERISA, the Code or any other Applicable Law.

Section 2.8. Mutilated, Destroyed, Lost and Stolen Securities.

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same Series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a protected purchaser, the Company shall execute and upon receipt of a Company Order, the Trustee shall authenticate and make available for delivery, in lieu of any such destroyed, lost or stolen Security, a new Security of the same Series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section 2.8, the Company or Trustee 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.

Every new Security of any Series issued pursuant to this Section 2.8 in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that Series duly issued hereunder.

The provisions of this Section 2.8 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 2.9. Outstanding Securities.

The Securities outstanding at any time are all the Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest on a Security, if applicable, effected by the Trustee in accordance with the provisions hereof and those described in this Section 2.9 as not outstanding.

If a Security is replaced pursuant to Section 2.8, it ceases to be outstanding until the Trustee receives proof satisfactory to it that the replaced Security is held by a protected purchaser.

If the Paying Agent (other than the Company, a Subsidiary of the Company or an Affiliate of the Company) holds on the Maturity of Securities of a Series money sufficient to pay such Securities payable on that date, then on and after that date such Securities of the Series cease to be outstanding and interest on them ceases to accrue.

The Company may purchase or otherwise acquire the Securities, whether by open market purchases, negotiated transactions or otherwise. A Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security.

In determining whether the Holders of the requisite principal amount of outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of a Discount Security that shall be deemed to be outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the Maturity thereof pursuant to Section 6.2.

Section 2.10. Treasury Securities.

In determining whether the Holders of the required principal amount of Securities of a Series have concurred in any request, demand, authorization, direction, notice, consent or waiver, Securities of a Series owned by the Company or any Affiliate of the Company shall be disregarded, except that for the purposes of determining whether the Trustee shall be protected in relying on any such request, demand, authorization, direction, notice, consent or waiver only Securities of a Series that a Responsible Officer of the Trustee knows are so owned shall be so disregarded.

Section 2.11. Temporary Securities.

Until definitive Securities are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities upon a Company Order. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee upon request shall authenticate definitive Securities of the same Series and date of maturity in exchange for temporary Securities. Until so exchanged, temporary securities shall have the same rights under this Indenture as the definitive Securities.

Section 2.12. Cancellation.

The Company at any time may deliver Securities to the Trustee for cancellation. The Agents shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. Upon the receipt of a Company Order, the Trustee shall cancel all Securities surrendered for transfer, exchange, payment, replacement or cancellation and shall destroy such canceled Securities (subject to the Trustee's record retention requirement and the record retention requirement of the Exchange Act) and deliver a certificate of such destruction to the Company unless the Company otherwise directs in writing. The Company may not issue new Securities to replace Securities that it has paid or delivered to the Trustee for cancellation.

Section 2.13. Defaulted Interest.

If the Company defaults in a payment of interest on a Series of Securities, it shall pay the defaulted interest, plus, to the extent permitted by law, any interest payable on the defaulted interest, to the Persons who are Securityholders of the Series on a subsequent special record date. The Company shall fix the record date and payment date. The Company shall deliver to each Securityholder of the Series at least 10 days before the record date, and to the Trustee at least 15 days before the record date, a notice that states the record date, the payment date and the amount of interest to be paid. The Company may pay defaulted interest in any other lawful manner.

Section 2.14. Global Securities.

2.14.1. Transfer and Exchange. The Company initially appoints The Depository Trust Company (“DTC”) to act as Depository with respect to the Securities. The Company initially appoints the Trustee as custodian for DTC. Notwithstanding any provisions to the contrary contained in Section 2.7 of this Indenture and in addition thereto, any Global Security shall be exchangeable pursuant to Section 2.7 of this Indenture for Securities registered in the names of Holders other than the Depository for such Security or its nominee only if (i) such Depository notifies the Company that it is unwilling or unable to continue as Depository for such Global Security or if at any time such Depository ceases to be a clearing agency registered under the Exchange Act, and, in either case, the Company fails to appoint a successor Depository registered as a clearing agency under the Exchange Act within 90 days of such event or (ii) the Company executes and delivers to the Trustee an Officer’s Certificate to the effect that such Global Security shall be so exchangeable. Any Global Security that is exchangeable pursuant to the preceding sentence shall be exchangeable for Securities registered in such names as the Depository shall direct in writing in an aggregate principal amount equal to the principal amount of the Global Security with like tenor and terms.

Except as provided in this Section 2.14.1, a Global Security may not be transferred except as a whole by the Depository with respect to such Global Security to a nominee of such Depository, by a nominee of such Depository to such Depository or another nominee of such Depository or by the Depository or any such nominee to a successor Depository or a nominee of such a successor Depository.

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

2.14.2. Legend. Any Global Security issued hereunder shall bear a legend in substantially the following form:

“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. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY, BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH A SUCCESSOR DEPOSITARY.”

2.14.3. Acts of Holders. The Depositary, as a Holder, may appoint agents and otherwise authorize participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under this Indenture.

2.14.4. Payments. Notwithstanding the other provisions of this Indenture, unless otherwise specified as contemplated by Section 2.2, payment of the principal of and interest, if any, on any Global Security shall be made to the Holder thereof, which in the case of a Depositary therefore will be made in accordance with its applicable procedures.

2.14.5. Holders. The Company, the Trustee and each Agent shall treat the Person in whose name any Security is registered in the register maintained by the Registrar as the Holder for all purposes including for purposes of obtaining any consents, declarations, waivers or directions permitted or required to be given by the Holders pursuant to this Indenture.

2.14.6. None of the Trustee or any Agent shall have any responsibility or obligation to any beneficial owner of an interest in a Global Security, a member of, or a participant in, the Depositary or other Person with respect to the accuracy of the records of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount or delivery of any Securities (or other security or property) under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to Holders with respect to the Securities shall be given or made only to or upon the order of the registered Holders (which shall be the Depositary or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through the Depositary subject to the applicable rules and procedures of the Depositary. The Trustee and each Agent may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its members, participants and any beneficial owners.

Section 2.15. CUSIP Numbers.

The Company in issuing the Securities may use “CUSIP,” “ISIN” and or “Common Code” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP,” “ISIN” and or “Common Code” numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers

either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other elements of identification printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly inform the Trustee of any change in the CUSIP, ISIN or Common Code numbers.

ARTICLE III.
REDEMPTION

Section 3.1. Notice to Trustee; No Liability for Calculations.

The Company may, with respect to any Series of Securities, reserve the right to redeem and pay such Series of Securities or may covenant to redeem and pay such Series of Securities or any part thereof prior to the Stated Maturity thereof at such time and on such terms as provided for in Sections 3.9 and 3.10 hereof or, as applicable, in the Board Resolution, Officer's Certificate or supplemental indenture relating to such Series. If a Series of Securities is redeemable pursuant to this Article III and the Company wants or is obligated to redeem prior to the Stated Maturity thereof all or part of the Series of Securities pursuant to the terms of such Securities, it shall notify the Trustee in writing of the redemption date and the principal amount of Series of Securities to be redeemed at least 40 days before a redemption date (or such shorter notice as may be acceptable to the Trustee). The Trustee shall have no liability with respect to or obligation to calculate the redemption price of any Securities to be redeemed pursuant to this Indenture.

Section 3.2. Selection of Securities to be Redeemed.

Unless otherwise indicated for a particular Series by a Board Resolution, Officer's Certificate or a supplemental indenture, if less than all of the Securities of a Series are to be redeemed at any time, the Trustee will select the Securities of a Series to be redeemed on a *pro rata* basis (or, in the case of Securities issued in global form based on a method that most nearly approximates a *pro rata* selection as the Trustee deems fair and appropriate) unless otherwise required by law or applicable stock exchange or Depositary requirements. The Trustee will not be liable for selections made by it as contemplated in this section.

No Securities of a Series in principal amount of \$2,000 or less can be redeemed in part.

Notices of purchase or redemption will be given to each Holder pursuant to Section 3.3 and Section 10.1.

Section 3.3. Notice of Redemption.

Unless otherwise indicated for a particular Series by Board Resolution, Officer's Certificate or supplemental indenture, at least 30 days but not more than 60 days before a redemption date, the Company will deliver a notice of redemption to each Holder whose Securities are to be redeemed in accordance with Section 10.1, except that redemption notices may be given more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Securities or a satisfaction and discharge of this Indenture pursuant to Article VIII hereof.

The notice shall identify the Securities to be redeemed and corresponding CUSIP, ISIN or Common Code numbers, as applicable, and will state:

(a) the redemption date;

(b) the redemption price and the amount of accrued interest, if any, and Additional Amounts, if any, to be paid;

(c) if any Global Security is being redeemed in part, the portion of the principal amount of such Global Security to be redeemed and that, after the redemption date upon surrender of such Global Security, the principal amount thereof will be decreased by the portion thereof redeemed pursuant thereto;

(d) if any Certificated Security is being redeemed in part, the portion of the principal amount of such Security to be redeemed, and that, after the redemption date, upon surrender of such Security, a new Certificated Security or Certificated Securities in principal amount equal to the unredeemed portion thereof will be issued in the name of the Holder thereof upon cancellation of the original Certificated Security;

(e) the name and address of the Paying Agent(s) to which the Securities are to be surrendered for redemption;

(f) that Securities called for redemption must be surrendered to the relevant Paying Agent to collect the redemption price, plus accrued and unpaid interest, if any, and Additional Amounts, if any;

(g) that, unless the Company defaults in making such redemption payment, interest and Additional Amounts, if any, on Securities called for redemption cease to accrue on and after the redemption date;

(h) that Securities of the Series called for redemption must be surrendered to the Paying Agent to collect the redemption price;

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

(j) that no representation is made as to the correctness or accuracy of the CUSIP, ISIN or Common Code numbers, if any, listed in such notice or printed on the Securities.

At the Company's written request, the Trustee shall give the notice of redemption in the Company's name and at its expense; *provided, however*, that the Company has delivered to the Trustee, at least 40 days prior to the redemption date, an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.4. Effect of Notice of Redemption.

Once notice of redemption is mailed or published as provided in Section 3.3, Securities of a Series called for redemption become due and payable on the redemption date and at the redemption price. Unless otherwise indicated for a particular Series by Board Resolution, Officer's Certificate or supplemental indenture, a notice of redemption may not be conditional. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price plus accrued interest to the redemption date.

On or after any purchase or redemption date, unless the Company defaults in payment of the purchase or redemption price, interest shall cease to accrue on Securities or portions thereof tendered for purchase or called for redemption.

Section 3.5. Deposit of Redemption Price.

On or before 10:00 a.m., New York City time, on the redemption date, the Company shall deposit with the Paying Agent money in immediately available funds sufficient to pay the redemption price of and accrued interest, if any, on all Securities to be redeemed on that date.

Section 3.6. Securities Redeemed in Part.

Upon surrender of a Certificated Security that is redeemed in part, the Trustee shall authenticate for the Holder a new Certificated Security of the same Series and the same maturity equal in principal amount to the unredeemed portion of the Security surrendered.

In relation to Certificated Securities, a new Security in principal amount equal to the unpurchased or unredeemed portion of any Security purchased or redeemed in part will be issued in the name of the Holder thereof upon cancellation of the original Certificated Security.

Section 3.7. Sinking Fund.

Unless otherwise indicated for a particular Series by Board Resolution, Officer's Certificate or supplemental indenture, the provisions of Sections 3.7, 3.8 and 3.9 shall be applicable to any sinking fund for the retirement of Securities of a Series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of Securities of any series is referred to as an "optional sinking fund payment." If provided for by the terms of Securities of any Series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 3.8. Each sinking fund payment shall be applied to the redemption of Securities of any Series as provided for by the terms of Securities of such Series.

Section 3.8. Satisfaction of Sinking Fund Payments with Securities.

The Company (i) may deliver outstanding Securities of a Series other than any Securities previously called for redemption and (ii) may apply as a credit Securities of a Series that have been redeemed either at the election of the Company pursuant to the terms of such Securities

or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such Series required to be made pursuant to the terms of such Securities, provided that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the redemption price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

Section 3.9. Redemption of Securities for Sinking Fund.

Not less than 40 days prior to each sinking fund payment date for any Series of Securities, the Company will deliver to the Trustee an Officer's Certificate specifying the amount of the next ensuing sinking fund payment for that Series pursuant to the terms of the Series, the portion thereof, if any, that is to be satisfied by payment of cash in the currency in which the Securities of such Series are denominated (except as provided pursuant to Section 2.2), the portion thereof, if any, that is to be satisfied by delivering and crediting Securities of that Series pursuant to Section 3.8 and the basis for such credit. Together with such Officer's Certificate, the Company will deliver to the Trustee any Securities to be so delivered. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 3.3 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.3.

Section 3.10. Redemption Upon Changes in Tax Law.

The Company may redeem the Securities, in whole but not in part, at its discretion at any time upon giving notice to the Holders of such of the Securities in accordance with Section 3.3 (which notice will be irrevocable), at a redemption price equal to 100% of the aggregate principal amount thereof, together with accrued and unpaid interest, if any, to the date fixed by the Company for redemption (a "*Tax Redemption Date*") and all Additional Amounts (if any) then due and which will become due on the Tax Redemption Date as a result of the redemption or otherwise (subject to the right of Holders of such Securities on the relevant record date to receive interest due on the relevant interest payment date and Additional Amounts (if any) in respect thereof), if on the next date on which any amount would be payable with respect to such Securities, the Company is or would be required to pay Additional Amounts, and the Company cannot avoid any such payment obligation by taking reasonable measures available, and the requirement arises as a result of:

(a) any amendment to, or change in, the laws (or any regulations or rulings promulgated thereunder) of a relevant Tax Jurisdiction which change or amendment becomes effective on or after the Issue Date (or, if the applicable Tax Jurisdiction became a Tax Jurisdiction on a date after the Issue Date, such later date), or

(b) any amendment to, or change in, an official interpretation or application of such laws, regulations or rulings (including by virtue of a holding, judgment, order by a court of competent jurisdiction or a change in published administrative practice) which amendment or change becomes effective on or after the Issue Date (or, if the applicable Tax Jurisdiction became a Tax Jurisdiction on a date after the Issue Date, such later date).

The Company, as applicable, will not give any such notice of redemption earlier than 90 days prior to the earliest date on which the Company would be obligated to make such payment or withholding if a payment with respect to the applicable Securities was then due, and the obligation to pay Additional Amounts must be in effect at the time such notice is given. Prior to the publication or, where relevant, mailing of any notice of redemption of the Securities pursuant to the foregoing, the Company will deliver to the Trustee an Opinion of Counsel of independent tax counsel to the effect that there has been such amendment or change which would entitle the Company to redeem such Securities hereunder. In addition, before the Company publishes or mails notice of redemption of such Securities as described above, it will deliver to the Trustee an Officer's Certificate to the effect that it cannot avoid its obligation to pay Additional Amounts by taking reasonable measures available to the Company.

The Trustee will accept and shall be entitled to rely on such Officer's Certificate and Opinion of Counsel as sufficient evidence of the existence and satisfaction of the conditions precedent as described above, in which event it will be conclusive and binding on the Holders of the Securities.

The foregoing will apply *mutatis mutandis* to any jurisdiction in which any successor Person to the Company is incorporated or organized, or any jurisdiction from or through which payment is made by or on behalf of such Person on the Securities and any political subdivision thereof or therein.

ARTICLE IV. COVENANTS

Section 4.1. Payment of Principal, Premium and Interest.

The Company covenants and agrees for the benefit of the Holders of each Series of Securities that it will duly and punctually pay the principal of, premium, if any, and interest, on the Securities of that Series in accordance with the terms of such Securities and this Indenture. On or before 10:00 a.m., New York City time, on the applicable payment date, the Company shall deposit with the Paying Agent money sufficient to pay the principal of, premium, if any, and interest on the Securities of each such Series in accordance with the terms of such Securities and this Indenture.

Section 4.2. Compliance Certificate.

The Company shall deliver to the Trustee, within 120 days after the end of its fiscal year (which as of the date of this Indenture is December 31, or if the fiscal year with respect to the Company is changed so that it ends on a date other than December 31, such other fiscal year end date as the Company shall notify to the Trustee in writing) of the Company, an Officer's Certificate stating that a review of the activities of the Company and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officer with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to his/her knowledge the Company is not in default in the performance or observance of any of the terms, provisions and conditions hereof (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he may have knowledge and what action the Company is taking or proposes to take with respect thereto). Such Officer's Certificate need not include a reference to any non-compliance that has been fully cured prior to the date as of which such certificate speaks.

The Company will, so long as any of the Securities are outstanding, deliver to a Responsible Officer of the Trustee, within 30 days upon becoming aware of any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 4.3. Stay, Extension and Usury Laws.

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

Section 4.4. Corporate Existence.

Subject to Article V, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and rights (charter and statutory); *provided, however*, that the Company shall not be required to preserve any such right if its Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of its business and its Subsidiaries taken as a whole and that the loss thereof is not adverse in any material respect to the Holders of the Securities.

Section 4.5. Limitation on Liens.

The Company will not, and will not permit any of its respective Subsidiaries to, incur, issue, assume or guarantee any notes, bonds, debentures or other similar evidences of indebtedness for money borrowed, secured by a Mortgage on any Restricted Property, or on any shares of stock, ownership interests in, or indebtedness of a Restricted Subsidiary, without

effectively providing concurrently with the incurrence, issuance, assumption or guarantee of such secured indebtedness that the Securities (together with, if the Company shall so determine, any of its other indebtedness or the indebtedness of any such Restricted Subsidiary then existing or thereafter created ranking on a parity with the Securities) shall be secured equally and ratably with (or prior to) such secured indebtedness, so long as such secured indebtedness shall be so secured, unless, after giving effect thereto, the aggregate amount of all such secured indebtedness (excluding any indebtedness secured by Mortgages of the types referred to in clauses (1) through (10) below) would not exceed 20% of Consolidated Net Worth as shown on the Company's most recent consolidated quarterly financial statements; *provided, however*, that these provisions shall not apply to:

(a) Mortgages existing on the date of original issuance of the Securities;

(b) Mortgages on property or assets of, or on any shares of stock, ownership interests in or indebtedness of, any Person existing at the time such Person becomes a Subsidiary (including a Restricted Subsidiary) of the Company;

(c) Mortgages on property or assets existing at the time of acquisition thereof (including acquisition through merger or consolidation) or to secure the payment of all or any part of the purchase price or cost of construction, development, expansion or improvement thereof or to secure any indebtedness incurred prior to, at the time of, or within 12 months after, the acquisition or completion of construction, development, expansion or improvement of such property or assets or its commencement of commercial operations for the purpose of financing all or any part of the purchase price or cost of construction, development, expansion or improvement thereof;

(d) Mortgages in favor of the Company or any of its Subsidiaries;

(e) the Mortgage of any of the Company's property or assets or any property or assets of any of its Restricted Subsidiaries in favor of the United States of America or any other sovereign entity, or any state, province or other political subdivision thereof, or any entity, department, agency, instrumentality or comparable authority thereof, to secure partial, progress, advance or other payments pursuant to the provisions of any contract, statute, law, rule or regulation;

(f) the Mortgage of any property or assets to secure indebtedness of the pollution control, industrial revenue or other revenue bond type;

(g) Mortgages incurred or deposits made (including Mortgages and deposits securing letters of credit or similar financial assurance) to secure the performance of or in connection with bids, tenders, statutory, governmental or private contractual or other obligations, surety, performance, completion, appeal or similar bonds, leases, return-of-money bonds and other obligations similar to any of the foregoing, in each case in the ordinary course of business;

(h) Mortgages arising by operation of law, including but not limited to Mortgages for taxes, assessments or similar charges that are not yet due or the validity of which is being contested in good faith by appropriate proceedings;

(i) Mortgages created in connection with the acquisition of property or assets, or a project financed with, Non-recourse Debt; and

(j) any extension, renewal or replacement (or successive extensions, renewals or replacements), as a whole or in part, of any Mortgage referred to in the foregoing clauses, inclusive; provided, that such extension, renewal or replacement Mortgage shall be limited to all or a part of the same property or assets that secured the Mortgage extended, renewed or replaced, plus improvements on such property or assets.

Section 4.6. Additional Amounts.

(a) All payments made by the Company under or with respect to the Securities will be made free and clear of and without withholding or deduction for, or on account of, any present or future tax, duty, levy, assessment or other governmental charge, including any related interest, penalties or additions to tax (“*Taxes*”) unless the withholding or deduction of such Taxes is then required by law or by interpretation or administration of law. If any deduction or withholding for, or on account of, any Taxes imposed or levied by or on behalf of (1) any jurisdiction in which the Company is then incorporated or organized or any political subdivision thereof or therein (each, a “*Company Tax Jurisdiction*”) or (2) any jurisdiction from or through which payment is made by or on behalf of the Company (including the jurisdiction of any Paying Agent for the applicable Securities) or any political subdivision thereof or therein (each, together with each Company Tax Jurisdiction, a “*Tax Jurisdiction*”) will at any time be required to be made from any payments made by the Company under or with respect to the Securities, including payments of principal, redemption price, interest or premium, the Company will pay such additional amounts (the “*Additional Amounts*”) as may be necessary in order that the net amounts received with respect to such payments by each holder of the applicable Securities after such withholding, deduction or imposition (including any such withholding, deduction or imposition from such Additional Amounts) will equal the respective amounts that would have been received with respect to such payments in the absence of such withholding or deduction; *provided, however*, that no Additional Amounts will be payable with respect to:

(1) any Taxes, to the extent such Taxes would not have been imposed but for the existence of any actual or deemed present or former connection between the Holder or the beneficial owner of such Securities and the relevant Tax Jurisdiction (including being or having been a national, resident or citizen of, being or having been engaged in a trade or business in, being or having been physically present in, or having or having had a permanent establishment in, such jurisdiction for Tax purposes), other than the holding of such Security, the enforcement of rights under such Security or the receipt of any payments with respect to such Security;

(2) any Taxes, to the extent such Taxes were imposed as a result of the presentation of such Security for payment (where presentation is required) more than 30 days after the relevant payment is first made available for payment to the holder (except to the extent that the holder would have been entitled to Additional Amounts had the applicable Security been presented on the last day of such 30 day period);

(3) any estate, inheritance, gift, sales, transfer, personal property or similar Taxes;

(4) any Tax imposed on or with respect to any payment by the Company to the Holder if such Holder is a fiduciary, partnership, limited liability company or other Person other than the sole beneficial owner of such payment to the extent that Taxes would not have been imposed on such payment had such Holder been the sole beneficial owner of such Security;

(5) with respect to any Taxes imposed by the United States, any such Taxes imposed by reason of the failure of such Holder to fulfill the statement requirements of Sections 871(h) or 881(c) of the Internal Revenue Code of 1986, as amended;

(6) Taxes imposed on or with respect to a payment made to a Holder or beneficial owner of such Security who would have been able to avoid such withholding or deduction by presenting such Security (where presentation is required) to another Paying Agent;

(7) any Taxes payable other than by deduction or withholding from payments under, or with respect to, such Securities or the Guarantee;

(8) any Taxes to the extent such Taxes are imposed or withheld by reason of the failure of the Holder or beneficial owner of such Security, to comply with any written request of the Company addressed to the Holder or beneficial owner to satisfy any certification, identification, information or other reporting requirements, whether required by statute, treaty, regulation or administrative practice of a relevant Tax Jurisdiction, as a precondition to exemption from, or reduction in the rate of deduction or withholding of, Taxes imposed by the relevant Tax Jurisdiction (including a certification that the Holder or beneficial owner is not resident in such Tax Jurisdiction), but in each case, only to the extent the Holder or beneficial owner is legally entitled to provide such certification or documentation; or

(9) any combination of items (1) through (8) of this Section 4.6(a).

(b) In addition to the foregoing, the Company will also pay and indemnify the Holders for any present or future stamp, issue, registration, court or documentary Taxes, or any other excise or property Taxes, charges or similar levies (including penalties, interest and any other reasonable expenses related thereto) which are levied by a relevant Tax Jurisdiction on the execution, delivery, issuance, or registration of the Securities, or the related Indenture, or any other document or instrument referred to therein in connection with a transfer of such Securities at the time of the initial resale by the initial purchasers.

(c) If the Company becomes aware that it will be obligated to pay Additional Amounts with respect to any payment under or with respect to the Securities, the Company will deliver to the Trustee on a date that is at least 30 days prior to the date of that payment (unless the obligation to pay Additional Amounts arises fewer than 30 days prior to that payment date, in which case the Company shall notify the Trustee promptly thereafter) an Officer's Certificate stating the fact that Additional Amounts will be payable and the amount estimated to be so payable. The Officer's Certificate(s) must also set forth any other information reasonably necessary to enable the Paying Agents to pay such Additional Amounts to Holders on the relevant payment date. The Trustee shall be entitled to rely solely on such Officer's Certificate as conclusive proof that such payments are necessary.

(d) The Company will make all withholdings and deductions required by law with respect to the Securities, and will remit the full amount deducted or withheld to the relevant Tax authority in accordance with applicable law. The Company will use its reasonable efforts to obtain Tax receipts from each Tax authority evidencing the payment of any Taxes so deducted or withheld. Upon reasonable written request, the Company will furnish to the Trustee (or to a Holder or beneficial owner upon written request), within a reasonable time after the date the payment of any Taxes so deducted or withheld is made, certified copies of Tax receipts evidencing payment by the Company or if, notwithstanding the Company's efforts to obtain receipts, receipts are not obtained, other evidence of payments (reasonably satisfactory to the Trustee).

(e) Whenever in this Indenture there is mentioned, in any context, the payment of amounts based upon the principal amount of the Securities or of principal, interest or of any other amount payable under, or with respect to, any of the Securities, such mention shall be deemed to include mention of the payment of Additional Amounts to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

The obligations in this Section 4.6 will survive any termination, defeasance or discharge of this Indenture, any transfer by a Holder or beneficial owner of its Securities, and will apply, mutatis mutandis, to any jurisdiction in which any successor Person to the Company is incorporated or organized, or any jurisdiction from or through which payment is made by or on behalf of such Person on the Securities and any political subdivision thereof or therein.

Section 4.7. Reports.

(a) So long as any Securities are outstanding, the Company shall file with the Trustee, within 15 days after the Company files with the SEC, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may from time to time by rules and regulations prescribe) that the Company may be required to file with the SEC pursuant to Section 13 or Section 15(d) of the Exchange Act. The Company shall be deemed to have complied with the previous sentence to the extent that such information, documents and reports are filed with the SEC via EDGAR (or any successor electronic delivery procedure).

(b) Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

ARTICLE V.
SUCCESSORS

Section 5.1. Consolidation, Merger and Sale of Assets.

(a) The Company may not consolidate with or merge into any other Person or transfer or lease all or substantially all of its assets to any Person unless any successor or purchaser expressly assumes its obligations under this Indenture and the Securities, by an indenture supplemental to this Indenture to which the Company is a party to, and immediately after which, no Default or Event of Default, shall have happened and be continuing. An Officer's Certificate and an Opinion of Counsel will be delivered to the Trustee, which will serve as conclusive evidence of compliance with this Section 5.1.

(b) Upon any consolidation or merger or transfer or lease of all or substantially all of the Company's assets to any Person, as the case may be, the successor Person formed by such consolidation or into or with which the Company is merged or to which such transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person has been named as the Company herein. In the event of any such transfer (other than a conveyance by way of lease) the Company or any successor entity which shall theretofore have become such in the manner described in this Section 5.1(b), shall be discharged from all obligations and covenants under this Indenture and the Securities and may be liquidated and dissolved.

ARTICLE VI.
DEFAULTS AND REMEDIES

Section 6.1. Events of Default.

The following are "*Events of Default*" with respect to the Securities of any Series, unless in the establishing Board Resolution, Officer's Certificate or supplemental indenture, it is provided that such Series shall not have the benefit of said Event of Default:

- (a) failure to pay any interest on the Securities within 30 days after such interest becomes due and payable;
- (b) failure to pay principal of the Securities at maturity, or if applicable, the redemption price, when the same become due and payable;
- (c) failure to pay any sinking fund installment as and when the same shall become due and payable by the terms of the Securities, and continuance of such default for a period of 30 days;

(d) failure to comply with any of the covenants or agreements in the Securities or this Indenture (other than an agreement or covenant that the Company has included in this Indenture solely for the benefit of another Series of Securities) for 90 days after written notice by the Trustee or by the Holders of at least 25% in principal amount of all outstanding debt securities affected by that failure;

(e) the Company pursuant to or within the meaning of any Bankruptcy Law:

- (1) commences a voluntary case,
- (2) consents to the entry of an order for relief against it in an involuntary case,
- (3) consents to the appointment of a Custodian of it or for all or substantially all of its property,
- (4) makes a general assignment for the benefit of its creditors, or
- (5) generally is unable to pay its debts as the same become due; or

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

- (1) is for relief against the Company in an involuntary case,
- (2) appoints a Custodian of the Company or for all or substantially all of its property, or
- (3) orders the liquidation of the Company,

and the order or decree remains unstayed and in effect for 60 days; and

(g) any other Event of Default provided in the supplemental indenture or Board Resolution under which such Series of Securities is issued or in the form of Security for such Series.

The term “*Bankruptcy Law*” means title 11, U.S. Code or any similar Federal or State law for the relief of debtors. The term “*Custodian*” means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

A Default under one Series of Securities issued under this Indenture will not necessarily be a default under another Series of Securities under this Indenture.

Section 6.2. Acceleration of Maturity; Rescission and Annulment.

If an Event of Default for a Series of Securities occurs and is continuing (other than an Event of Default referred to in Section 6.1(e) or (f)), the Trustee or the Holders of at least 25% in principal amount of such Series of Securities may require the Company to pay immediately the principal amount plus accrued and unpaid interest on such Securities. If an Event of Default referred to in Section 6.1(e) or (f) occurs, the principal amount plus accrued and unpaid interest on such Series of Securities will become immediately due and payable without any action on the part of the Trustee or any Holder.

At any time after such a declaration of acceleration with respect to 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 VI provided, the Holders of a majority in principal amount of the outstanding Securities of that 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 Securities of that Series, other than the non-payment of the principal and interest, if any, of Securities of that Series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 6.13.

No such rescission shall affect any subsequent Default or impair any right consequent thereon.

Section 6.3. Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if

(a) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 30 days, or

(b) default is made in the payment of principal of any Security at the Maturity thereof, or

(c) default is made in the deposit of any sinking fund payment when and as due by the terms of a Security,

then, the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and any overdue interest at the rate or rates prescribed therefor in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys adjudged or deemed to be payable in the manner provided by law out of the property of the Company, or any other obligor upon such Securities, wherever situated.

If an Event of Default with respect to any Securities of any Series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such Series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 6.4. Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of principal and interest owing and unpaid with respect to the Securities and to file such 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 of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same,

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each 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 it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.6.

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 or the rights of any Holder thereof or to authorize the Trustee to vote with respect to the claim of any Holder in any such proceeding.

Section 6.5. Trustee May Enforce Claims Without Possession of Securities.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities with respect to which such judgment has been recovered.

Section 6.6. Application of Money Collected.

Any money collected by the Trustee pursuant to this Article VI shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

First: To the payment of all amounts due the Trustee under Section 7.6;

Second: To the payment of the amounts then due and unpaid for principal of, premium, if any, and interest on the Securities with respect to which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and interest, respectively; and

Third: To the Company.

Section 6.7. Limitation on Suits.

A Holder of Securities of any Series may pursue any remedy under this Indenture applicable to such Securities only if:

(a) the Holder gives the Trustee written notice of a continuing Event of Default for such Series of Securities;

(b) the Holders of at least 25% in principal amount of such outstanding Series of Securities make a written request to the Trustee to pursue the remedy;

(c) the Holders furnish to the Trustee indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request;

(d) the Trustee fails to act for a period of 60 days after receipt of notice and furnishing of indemnity; and

(e) during that 60-day period, the Holders of a majority in principal amount of such Securities do not give the Trustee a direction inconsistent with the request.

This provision does not, however, affect the right of a Holder of Securities to sue for enforcement of any overdue payment with respect to such Securities.

Section 6.8. Unconditional Right of Holders to Receive Principal and Interest.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest, if any, on such Security on the Stated Maturity or Stated Maturities expressed in such Security (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 6.9. 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 had been instituted.

Section 6.10. Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in Section 2.8, 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, to the extent permitted by law, prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11. Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Securities 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 VI 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.

Section 6.12. Control by Holders.

The Holders of a majority in principal amount of the outstanding Securities of any Series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such Series, provided that

- (a) such direction shall not be in conflict with any rule of law or with this Indenture,
- (b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and
- (c) the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability or that it will not be adequately indemnified against the costs, expenses and liabilities which might be incurred by it in complying with such direction.

Section 6.13. Waiver of Past Defaults.

The Holders of not less than a majority in principal amount of the outstanding Securities of any Series may on behalf of the Holders of all the Securities of such Series waive any past Default hereunder with respect to such Series and its consequences, except a Default in the payment of the principal of or interest on any Security of such Series (*provided, however*, that the Holders of a majority in principal amount of the outstanding Securities of any Series may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration). Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.14. Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the outstanding Securities of any Series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or interest on any Security on or after the Stated Maturity or Stated Maturities expressed in such Security (or, in the case of redemption, on the redemption date).

Section 6.15. Sole Remedy for Event of Default Relating to Failure to Comply with Section 4.7 and Section 314(a)(1) of the Trust Indenture Act.

Notwithstanding any other provision in this Indenture, to the extent elected by the Company, the sole remedy for an Event of Default relating to the failure to comply with Section 4.7 and the failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act will for the first 180 days after the occurrence of such an Event of Default consist exclusively of the right to receive additional interest, at an annual rate of 0.25% of the principal amount of the Notes during the first 90 days of the occurrence of such Event of Default on the notes and 0.50% of the principal amount of the Notes from the 91st day until the 180th day following the occurrence of such Event of Default on the Notes.

If the Company so elects, such additional interest will be payable on all outstanding Notes on the date on which an Event of Default relating to a failure to comply with Section 4.7 first occurs, which will be the 60th day after notice to the Company of its failure to so comply. On the 180th day after such Event of Default (if the Event of Default relating to a failure to comply with Section 4.7 is not cured or waived prior to such 180th day), the Notes will be subject to acceleration as provided in Section 6.2.

The provisions of this Section 6.15 will not affect the rights of Holders of Notes in the event of the occurrence of any other Event of Default. In the event the Company does not elect to pay the additional interest upon an Event of Default in accordance with this Section 6.15, the Notes will be subject to acceleration as provided in Section 6.2.

ARTICLE VII.
TRUSTEE

Section 7.1. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in such exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of an Event of Default with respect to the Securities of any Series:

- (1) the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and
- (2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine such certificates and opinions to determine whether, on their face, they appear to conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

- (1) this paragraph does not limit the effect of paragraph (b) of this Section 7.1; and
- (2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to the provisions of this Article VII.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability or to take any action hereunder that would violate applicable law binding upon it. The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity reasonably satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on or investment of any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law. All money received by the Trustee shall, until applied as herein provided, be held in trust for the payment of the principal of, premium (if any) and interest on and Additional Amounts with respect to the Securities. The Trustee shall have no obligation to invest and reinvest any cash held in the by it in the absence of timely and specific written investment direction from the Company. In the absence of timely written investment direction from the Company, the funds shall remain uninvested. In no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon. The Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity.

Section 7.2. Rights of Trustee.

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, security or other paper or document.

(b) Before the Trustee acts or refrains from acting, it may require instruction, an Officer's Certificate or an Opinion of Counsel or both to be provided. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such instruction, Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel, accountants, and other professionals and the written advice of such counsel, accountants, other professionals, or any Opinion of Counsel shall be full and complete authorization and protection with respect to any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through agents, attorneys, custodians or nominees and shall not be responsible for the misconduct or negligence of any agent, attorney, custodian or nominee appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers conferred upon it by this Indenture or with respect to any action it takes or omits to take in good faith in accordance with a direction received by it from the Holders of a majority in aggregate principal amount of the relevant Series of Securities and in no event shall the Trustee be responsible for any liability hereunder in the absence of its own gross negligence, willful misconduct or bad faith.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

(f) Anything in this Indenture to the contrary notwithstanding, in no event shall the Trustee be liable under or in connection with this Indenture for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever, including but not limited to lost profits, whether or not foreseeable, even if the Trustee has been advised of the possibility thereof and regardless of the form of action in which such damages are sought.

(g) The Trustee shall be under no obligation to exercise any of the trusts or powers vested in it by this Indenture at the request, order or direction of any of the Holders of Securities pursuant to the provisions of this Indenture, unless such Holders of Securities shall have offered to the Trustee, security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred therein or thereby.

(h) The Trustee shall not be deemed to have notice of any Event of Default with respect to the Securities unless a Responsible Officer of the Trustee has received written notice of any event which is in fact such a default and such notice references the Securities and this Indenture.

(i) The Trustee may at any time request, and the Company shall deliver an Officer's Certificate setting forth the specimen signatures and 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.

(j) Notwithstanding any provision herein to the contrary, in no event shall the Trustee be liable for any failure or delay in the performance of its obligations under this Indenture because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, strikes or work stoppages for any reason, embargo, government action, including any laws, ordinances, regulations or the like which restrict or prohibit the providing of the services contemplated by this Indenture, inability to obtain material, equipment, or communications or computer facilities, or the failure of equipment or interruption of communications or computer facilities, and other causes beyond its control whether or not of the same class or kind as specifically named above.

(k) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, each Agent, and each other agent, custodian and other Person employed to act hereunder; provided, however, that no Agent shall be subject to a prudent man standard if an Event of Default has occurred and is continuing.

(l) The permissive rights and powers of the Trustee enumerated herein shall not be construed as duties.

(m) Any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order (other than delivery of any Note to the Trustee for authentication and delivery pursuant to Section 2.3, which shall be sufficiently evidenced as provided therein) and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a Board Resolution.

(n) If at any time the Trustee is served with any arbitral, judicial or administrative order, judgment, award, decree, writ or other form of arbitral, judicial or administrative process which in any way affects this Indenture, the Notes or any part thereof or funds held by it (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions), it shall forward a copy of such arbitral, judicial or administrative order, judgment, award, decree, writ or other form of arbitral, judicial or administrative process to the Company (to the extent not prohibited by applicable law); and if the Trustee complies with any such arbitral, judicial or administrative order, judgment, award, decree, writ or other form of arbitral, judicial or administrative process, the Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, award, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

Section 7.3. May Hold Securities.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or any of its Affiliates with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights and duties. However, the Trustee is subject to Sections 7.9 and 7.10.

Section 7.4. Trustee's Disclaimer.

The Trustee makes no representation as to the validity, sufficiency or adequacy of any offering materials, this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities or any money paid to the Company or upon the Company's direction under any provision hereof, it shall not be responsible for any statement or recital herein or any statement in any offering materials or the Securities other than its certificate of authentication.

Section 7.5. Notice of Defaults.

If a Default or Event of Default with respect to the Securities of any Series occurs and is continuing and it is actually known to a Responsible Officer of the Trustee (pursuant to the terms of Section 7.2(h) hereof), the Trustee shall mail to Holders of Securities of such Series a notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, premium (if any) and interest on and Additional Amounts or any sinking fund installment with respect to the Securities of such Series, the Trustee may withhold the notice if and so long as a Responsible Officer in good faith determines that withholding the notice is in the interests of Holders of Securities of such Series to do so.

Section 7.6. Compensation and Indemnity.

The Company agrees to pay to the Trustee for its acceptance of this Indenture and services hereunder such compensation as the Company and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company agrees to reimburse the Trustee upon request for all reasonable disbursements, advances and expenses incurred by it. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company hereby indemnifies the Trustee from, and hold it harmless against any damage, cost, claim, loss, liability or expense (including the reasonable fees and expenses of the Trustee's agents and counsel) incurred by it arising out of or in connection with its acceptance and administration of the trusts set forth under this Indenture, the performance of its obligations and/or the exercise of its rights hereunder and in any other document related hereto, including the reasonable costs and expenses of defending itself against any claim, except as set forth in the next following paragraph, and the costs and expenses of enforcing the Company's indemnity obligations hereunder. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity; provided that, failure by the Trustee to so notify the Issuer shall not relieve the Company of its obligations hereunder. The Company may defend the claim, with counsel reasonably acceptable to the Trustee, and the Trustee shall reasonably cooperate in the defense, unless, the Trustee, in its reasonable discretion, determines that any actual or potential conflict of interest may exist or such counsel is not reasonably satisfactory to the Trustee, in which case the Trustee may have separate counsel, and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld or delayed.

The Company shall not be obligated to reimburse any expense or indemnify against any loss or liability incurred by the Trustee through the Trustee's own gross negligence or bad faith.

To secure the payment obligations of the Company in this Section 7.6, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay principal of, premium (if any) and interest on and any Additional Amounts with respect to Securities of any Series. Such lien and the obligations of the Company under this Section 7.6 shall survive the satisfaction and discharge of this Indenture, the payment of the Securities and/or the resignation or removal of the Trustee.

When the Trustee incurs expenses or renders services in connection with an Event of Default, 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 7.7. Replacement of Trustee.

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.7.

The Trustee may resign and be discharged at any time with respect to the Securities of one or more Series by so notifying the Company. The Holders of a majority in principal amount of the then outstanding Securities of any Series may remove the Trustee with respect to the Securities of such Series by so notifying the Trustee and the Company in writing at least thirty days prior to the effective date of such removal. The Company may remove the Trustee for any or all Series of the Securities if:

- (a) the Trustee fails to comply with Section 7.9;
- (b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (c) a Custodian or public officer takes charge of the Trustee or its property; or
- (d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, with respect to the Securities of one or more Series, the Company shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those Series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such Series). Within one year after the successor Trustee with respect to the Securities of any series takes office, the Holders of a majority in principal amount of the Securities of such Series then outstanding may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee with respect to the Securities of any Series does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of at least 10% in principal amount of the then outstanding Securities of such Series may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such Series.

If the Trustee with respect to the Securities of a Series fails to comply with Section 7.9, any Holder of Securities of such Series may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee with respect to the Securities of such Series.

In case of the appointment of a successor Trustee with respect to all Securities, each such successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the retiring Trustee under this Indenture. The successor Trustee shall give a notice of its succession to Holders in accordance with Section 10.2. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.6.

In case of the appointment of a successor Trustee with respect to the Securities of one or more 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 in which each successor Trustee shall accept such appointment and that (1) shall confer to each successor Trustee all the rights, powers 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 confirm that all the rights, powers 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. Nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, and 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. 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 shall have all the rights, powers 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. On request of the Company, or any successor Trustee, such retiring Trustee shall transfer to such successor Trustee all property held by such retiring Trustee as Trustee with respect to the Securities of that or those Series to which the appointment of such successor Trustee relates. Such retiring Trustee shall, however, have the right to deduct its unpaid fees and expenses, including attorneys' fees.

Notwithstanding replacement of the Trustee or Trustees pursuant to this Section 7.7, the obligations of the Company under Section 7.6 shall continue for the benefit of the retiring Trustee or Trustees.

Section 7.8. Successor Trustee by Merger, etc.

Subject to Section 7.9, if the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business (including this transaction) to, another corporation, the successor corporation without any further act shall be the successor Trustee.

In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the 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 to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

Section 7.9. Eligibility; Disqualification.

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States, any State thereof or the District of Columbia and authorized under such laws to exercise corporate trust power, shall be subject to supervision or examination by Federal or State (or the District of Columbia) authority and shall have, or be a subsidiary of a bank or bank holding company having, a combined capital and surplus of at least \$50 million as set forth in its most recent published annual report of condition.

Section 7.10. Preferential Collection of Claims Against Company.

The Trustee is subject to and shall comply with the provisions of the Trust Indenture Act of 1933, as amended (the "TIA") § 311(a), as if such section applied hereto, excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a), as if such section applied hereto, to the extent indicated therein.

ARTICLE VIII.
DISCHARGE OF INDENTURE

Section 8.1. Termination of Company's Obligations.

(a) This Indenture shall cease to be of further effect with respect to the Securities of a Series (except that all obligations of the Company under Section 7.6, the Trustee's and Paying Agent's obligations under Section 8.3 and the rights, powers, protections and privileges accorded the Trustee under Article VII shall survive), and the Trustee, on written demand of the Company shall execute instruments acknowledging the satisfaction and discharge of this Indenture with respect to the Securities of such Series, when:

(1) either

(A) all outstanding Securities of such Series theretofore authenticated and issued (other than destroyed, lost or stolen Securities that have been replaced or paid) have been delivered to the Trustee for cancellation; or

(B) all outstanding Securities of such Series not theretofore delivered to the Trustee for cancellation:

(i) have become due and payable, or

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

(iii) 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, in the case of clause (i), (ii) or (iii) above, the Company has irrevocably deposited or caused to be deposited with the Trustee as funds (immediately available to the Holders in the case of clause (i)) in trust for such purpose (x) cash in an amount, or (y) Government Obligations, maturing as to principal and interest at such times and in such amounts as will ensure the availability of cash in an amount or (z) a combination thereof which will be sufficient, in the opinion (in the case of (y) or (z)) of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on the Securities of such Series for principal and interest to the date of such deposit (in the case of Securities which have become due and payable) or for principal, premium, if any, and interest to the Stated Maturity or redemption date, as the case may be; or

(C) the Company has properly fulfilled such other means of satisfaction and discharge, as contemplated by Section 2.2 to be applicable to the Securities of such Series:

(2) the Company has paid or caused to be paid all other sums payable by it hereunder with respect to the Securities of such Series; and

(3) the Company has delivered to the Trustee an Officer's Certificate stating that all conditions precedent to satisfaction and discharge of this Indenture with respect to the Securities of such Series have been complied with, together with an Opinion of Counsel to the same effect.

(b) Unless this Section 8.1(b) is specified as not being applicable to Securities of a Series as contemplated by Section 2.2, the Company may terminate certain of its obligations under this Indenture ("*covenant defeasance*") with respect to the Securities of a Series if:

(1) the Company has irrevocably deposited or caused to be irrevocably deposited with the Trustee 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 Securities of such Series, (i) money, or (ii) Government Obligations with respect to such Series, maturing as to principal and interest at such times and in such amounts as will ensure the availability of money in the currency in which payment of the Securities of such Series is to be made in an amount or (iii) a combination thereof, that is sufficient, in the opinion (in the case of (ii) and (iii)) of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay the principal of and premium (if any) and interest on all Securities of such Series on each date that such principal, premium (if any) or interest is due and payable and (at the Stated Maturity thereof or upon redemption as provided in Section 8.1(e)) to pay all other sums payable by it hereunder; provided that the Trustee shall have been irrevocably instructed to apply such money and/or the proceeds of such Government Obligations to the payment of said principal, premium (if any) and interest with respect to the Securities of such Series as the same shall become due;

(2) the Company has delivered to the Trustee an Officer's Certificate stating that all conditions precedent to satisfaction and discharge of this Indenture with respect to the Securities of such Series have been complied with, and an Opinion of Counsel to the same effect;

(3) 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 (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit and the grant of any lien securing such borrowings);

(4) the Company shall have delivered to the Trustee an Opinion of Counsel from a nationally recognized counsel acceptable to the Trustee or a tax ruling to the effect that the Holders will not recognize income, gain or loss for Federal income tax purposes as a result of such Company's exercise of its option under this Section 8.1(b) and will be subject to Federal income tax on the same amount and in the same manner and at the same times as would have been the case if such option had not been exercised; and

(5) the Company has complied with any additional conditions specified pursuant to Section 2.2 to be applicable to the discharge of Securities of such Series pursuant to this Section 8.1.

In such event, this Indenture shall cease to be of further effect (except as set forth in this paragraph), and the Trustee, on written demand of the Company, shall execute instruments acknowledging satisfaction and discharge under this Indenture. However, the Company's obligations in Sections 2.4, 2.5, 2.6, 2.7, 2.8, 4.1, 5.1, 7.6 and 7.7, the Trustee's and Paying Agent's obligations in Section 8.3 and the rights, powers, protections and privileges accorded the Trustee under Article VII shall survive until all Securities of such Series are no longer outstanding. Thereafter, only the obligations of the Company in Section 7.6 and the Trustee's and Paying Agent's obligations in Section 8.3 shall survive with respect to Securities of such Series.

In order to have money available on a payment date to pay principal of or premium (if any) or interest on the Securities, the Government Obligations shall be payable as to principal or interest on or before such payment date in such amounts as will provide the necessary money. Government Obligations shall not be callable at the issuer's option.

(c) If the Company has previously complied or is concurrently complying with the conditions set forth in Section 8.1(b) (other than any additional conditions specified pursuant to Section 2.2 that are expressly applicable only to covenant defeasance) with respect to Securities of a Series, then unless this Section 8.1(c) is specified as not being applicable to Securities of such Series as contemplated by Section 2.2, the Company may elect to be discharged ("*legal defeasance*") from its obligations to make payments with respect to Securities of such Series, if:

(1) unless otherwise specified with respect to Securities of such Series as contemplated by Section 2.2, the Company has delivered to the Trustee an Opinion of Counsel from a nationally recognized counsel acceptable to the Trustee to the effect referred to in Section 8.1(b)
(4) with respect to such legal defeasance,

which opinion is based on (i) a private ruling of the Internal Revenue Service addressed to the Company, (ii) a published ruling of the Internal Revenue Service or (iii) a change in the applicable federal income tax law (including regulations) after the date of this Indenture; the Company has complied with any other conditions specified pursuant to Section 2.2 to be applicable to the legal defeasance of Securities of such Series pursuant to this Section 8.1(c); and

(2) the Company has delivered to the Trustee a Company Request requesting such legal defeasance of the Securities of such Series and an Officer's Certificate stating that all conditions precedent with respect to such legal defeasance of the Securities of such Series have been complied with, together with an Opinion of Counsel to the same effect.

In such event, the Company will be discharged from its obligations under this Indenture and the Securities of such Series to pay principal of, premium (if any) and interest on, and any Additional Amounts with respect to, Securities of such Series, the Company's obligations under Sections 4.1 and 5.1 shall terminate with respect to such Securities, and the entire indebtedness of the Company evidenced by such Securities shall be deemed paid and discharged.

(d) If and to the extent additional or alternative means of satisfaction, discharge or defeasance of Securities of a Series are specified to be applicable to such Series as contemplated by Section 2.2, the Company may terminate any or all of its obligations under this Indenture with respect to its Securities of a Series and any or all of its obligations under the Securities of such Series if it fulfills such other means of satisfaction and discharge as may be so specified, as contemplated by Section 2.2, to be applicable to the Securities of such Series.

(e) If Securities of any Series subject to subsections (a), (b), (c) or (d) of this Section 8.1 are to be redeemed prior to their Stated Maturity, whether pursuant to any optional redemption provisions or in accordance with any mandatory or optional sinking fund provisions, the terms of the applicable trust arrangement shall provide for such redemption, and the Company shall make such arrangements as are reasonably satisfactory to the Trustee for the giving of notice of redemption in the name, and at the expense, of the Company.

Section 8.2. Application of Trust Money.

The Trustee or a trustee satisfactory to the Trustee and the Company shall hold in trust money or Government Obligations deposited with it pursuant to Section 8.1 hereof. It shall apply the deposited money and the money from Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of premium (if any) and interest on and any Additional Amounts with respect to the Securities of the Series with respect to which the deposit was made.

Section 8.3. Repayment to Company.

The Trustee and the Paying Agent shall promptly pay to the Company upon written request any excess money or Government Obligations (or proceeds therefrom) held by them upon the written request of the Company and thereafter the Trustee and Paying Agent shall be relieved from all liability with respect to such money.

Subject to the requirements of any applicable abandoned property laws, the Trustee and the Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal, premium (if any), interest or any Additional Amounts that remains unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person, and all liability of the Trustee and the Paying Agent with respect to such money shall cease.

Section 8.4. Reinstatement.

If the Trustee or the Paying Agent is unable to apply any money or Government Obligations deposited with respect to Securities of any Series in accordance with Section 8.1 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Indenture with respect to the Securities of such Series and under the Securities of such Series shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.1 until such time as the Trustee or the Paying Agent is permitted to apply all such money or Government Obligations in accordance with Section 8.1; *provided, however,* that if the Company has made any payment of principal of, premium (if any) or interest on or any Additional Amounts with respect to any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or Government Obligations held by the Trustee or the Paying Agent.

ARTICLE IX.
AMENDMENTS AND WAIVERS

Section 9.1. Without Consent of Holders.

Without the consent of any Holder of Securities of a Series, the Company and the Trustee may amend or supplement this Indenture or the Series of Securities in the following circumstances:

- (1) to cure any ambiguity, omission, defect or inconsistency;
- (2) to provide for the assumption of the Company's obligations under this Indenture by a successor upon any merger, consolidation or asset transfer;
- (3) to provide for uncertificated Securities in addition to or in place of Certificated Securities;
- (4) to provide any security for or guarantees of its Securities or for the addition of an additional obligor on its Securities;
- (5) to comply with any requirement to effect or maintain the qualification of this Indenture under the Trust Indenture Act of 1939, as amended, if applicable;

- (6) to add covenants that would benefit the Holders of its Securities or to surrender any rights the Company has under this Indenture;
- (7) to change or eliminate any of the provisions of this Indenture, *provided* that any such change or elimination shall not become effective with respect to any outstanding Securities of any Series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision;
- (8) to provide for the issuance of and establish forms and terms and conditions of a new series of Securities;
- (9) to permit or facilitate the defeasance and discharge of the Securities;
- (10) to issue additional Securities of any Series, *provided* that such additional Securities have the same terms as, and be deemed part of the same Series as, the applicable Series of Securities to the extent required under this Indenture;
- (11) to evidence and provide for the acceptance of and appointment by a successor trustee with respect to the Securities of one or more Series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trust by more than one trustee;
- (12) to add additional Events of Default with respect to Securities; and
- (13) to make any change that does not adversely affect any of its outstanding Securities in any material respect.

Section 9.2. With Consent of Holders.

This Indenture or the Securities of a Series may be amended or supplemented, and waivers may be obtained, with the written consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Securities of such Series voting as a single class (including consents obtained in connection with a tender offer or exchange offer for, or purchase of, such Securities of a Series), and any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium on, if any, interest or Additional Amounts, if any, on, such Securities of a Series, except a payment Default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture or the Securities of such Series may be waived with the written consent of the Holders of a majority in aggregate principal amount of the then outstanding Securities of such Series voting as a single class (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, such Securities of a Series).

The Holders of a majority in principal amount of the outstanding Securities of a Series issued by the Company may waive any existing or past Default or Event of Default with respect to those Securities. Those Holders may not, however, waive any Default or Event of Default in any payment on any Security.

For the avoidance of doubt, any amendment, supplement or waiver to any Series of Securities made with the consent of Holders of such Series of Securities, shall be made with respect to that Series of Securities only, and not any other Series of Securities.

Section 9.3. Limitations.

Without the consent of each Holder of Securities of a Series affected thereby, an amendment, supplement or waiver may not (with respect to any Securities of such Series held by a non-consenting Holder):

- (1) reduce the amount of the Securities of such Series whose Holders must consent to an amendment, supplement or waiver;
- (2) reduce the rate of or change the time for payment of interest on the Securities of such Series;
- (3) reduce the principal of the Securities of such Series or change the Stated Maturity of the Securities of such Series;
- (4) reduce any premium payable on the redemption of the Securities of such Series or change the time at which the Securities of such Series may or must be redeemed;
- (5) change any obligation to pay Additional Amounts on the Securities of such Series;
- (6) make payments on the Security of such Series payable in currency other than as originally stated in such Security;
- (7) impair the Holder's right to institute suit for the enforcement of any payment on the Security of such Series;
- (8) make any change in the percentage of principal amount of the Securities of such Series necessary to waive compliance with Sections 6.8 and 6.13 of this Indenture or to make any change in this Section 9.3(8); or
- (9) waive a continuing Default or Event of Default regarding any payment on Securities of such Series.

In the event that consent is obtained from some of the Holders but not from all of the Holders with respect to any amendments or waivers pursuant to clauses (1) through (9) of this Section 9.3, new Securities of such Series with such amendments or waivers will be issued to those consenting Holders. Such new Securities shall have separate CUSIP numbers and ISINs from those Securities of such Series held by non-consenting Holders.

Section 9.4. Form of Amendments.

Every amendment to this Indenture or the Securities of one or more Series shall be set forth in a supplemental indenture.

Section 9.5. Revocation and Effect of Consents.

Until an amendment is set forth in a supplemental indenture or a waiver becomes effective, a consent to it by a Holder of a Security is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to his Security or portion of a Security if the Trustee receives the written notice of revocation before the date of the supplemental indenture or the date the waiver becomes effective.

Any amendment or waiver once effective shall bind every Securityholder of each Series affected by such amendment or waiver unless it is of the type described in any of clauses (1) through (9) of Section 9.3. In that case, the amendment or waiver shall bind each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security.

Section 9.6. Notation on or Exchange of Securities.

The Trustee may place an appropriate notation about an amendment or waiver on any Security of any Series thereafter authenticated. The Company, in exchange for its Securities of that Series, may issue and the Trustee shall authenticate upon request new Securities of that Series that reflect the amendment or waiver.

Section 9.7. Trustee Protected.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article IX or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 7.1) shall be fully protected in relying upon, an Officer's Certificate and Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture and complies with the terms of Section 10.3. The Trustee may, but shall not be obligated to, enter into any supplemental indentures which affect the Trustee's own rights, duties, immunities, or indemnities under this Indenture, the Securities or otherwise.

ARTICLE X.
MISCELLANEOUS

Section 10.1. Notices.

Any request, direction, instruction, demand, document, notice or communication by the Company or the Trustee to the other, or by a Holder to the Company or the Trustee, shall be in English and in writing and delivered in person, mailed by first-class mail, delivered via facsimile or delivered by overnight courier as follows:

if to the Company:

Colfax Corporation
420 National Business Parkway, 5th Floor
Annapolis Junction, Maryland 20701
Fax: (301) 323-9001
Attention: Corporate Secretary

with a copy to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
Fax: (212) 351-4035
Attention: Andrew L. Fabens

if to the Trustee:

U.S. Bank National Association
Goodwin Square
225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Trust Administration

with a copy to:

Perkins Coie LLP
30 Rockefeller Plaza, 22nd Floor
New York, NY 10112-0015
Attention: Sean Connery, Esq.

Notices shall be effective upon the recipient's actual receipt thereof. Any party by notice to the other parties may designate additional or different addresses for subsequent notices or communications.

Any notice or communication to (i) a Securityholder of a Certificated Security shall be mailed by first-class mail to his address shown on the register kept by the Registrar (ii) a Securityholder of a Global Security shall be delivered to the Depositary in accordance with its applicable procedures. Failure to mail a notice or communication to a Securityholder of any Series or any defect in it shall not affect its sufficiency with respect to other Securityholders of that or any other Series.

If a notice or communication to any Securityholder is mailed or published in the manner provided above, within the time prescribed, it is duly given, whether or not the Securityholder receives it.

If the Company mails a notice or communication to Securityholders, it shall mail a copy to the Trustee and each Agent at the same time.

With respect to this Indenture, the Trustee shall not have any duty or obligation to verify or confirm that the Person sending instructions, directions, reports, notices or other communications or information by electronic transmission is, in fact, a Person authorized to give such instructions, directions, reports, notices or other communications or information on behalf of the party purporting to send such electronic transmission; and the Trustee shall not have any liability for any losses, liabilities, costs or expenses incurred or sustained by any party as a result of such reliance upon or compliance with such instructions, directions, reports, notices or other communications or information. Each other party agrees to assume all risks arising out of the use of electronic methods to submit instructions, directions, reports, notices or other communications or information to the Trustee, including the risk of the Trustee acting on unauthorized instructions, notices, reports or other communications or information, and the risk of interception and misuse by third parties.

Section 10.2. Communication by Holders with Other Holders.

Securityholders of a Series may communicate pursuant to TIA § 312(b), as if such section applied hereto, with other Securityholders of such Series with respect to their rights under this Indenture or the Securities.

Section 10.3. Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

1. an Officer's Certificate stating that, in the opinion of the signer, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
2. an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 10.4. Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

1. a statement that the Person making such certificate or opinion has read such covenant or condition;
2. a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
3. a statement that, in the opinion of such Person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

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

Section 10.5. Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or a meeting of Securityholders of one or more Series. Any Agent may make reasonable rules and set reasonable requirements for its functions.

Section 10.6. Legal Holidays.

Unless otherwise provided by Board Resolution, Officer's Certificate or supplemental indenture for a particular Series, a "Legal Holiday" is any day that is not a Business Day. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period.

Section 10.7. No Personal Liability of Directors, Officers, Employees and Certain Others.

No director, officer, employee, incorporator or similar founder, stockholder or member of the Company will have any liability for or any obligations of the Company under this Indenture or the Securities or for any claim based on, with respect to or by reason of, such obligations or their creation. Each Holder of Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities. The waiver may not be effective to waive liabilities under the federal securities laws.

Section 10.8. Counterparts.

This Indenture may be executed in any number of counterparts, including in .pdf format by electronic mail, 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.

Section 10.9. Governing Laws.

THIS INDENTURE AND THE SECURITIES, INCLUDING ANY CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS INDENTURE OR THE SECURITIES, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

Section 10.10. No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or any Subsidiary of the Company. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 10.11. Successors.

All agreements of the Company in this Indenture and the Securities shall bind its respective successors. All agreements of the Trustee in this Indenture shall bind its successor.

Section 10.12. Severability.

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 10.13. Table of Contents, Headings, Etc.

The Table of Contents, Cross Reference Table, and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 10.14. Judgment Currency.

The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due with respect to the principal of or interest or other amount on the Securities of any Series (the "Required Currency") into a currency in which a judgment will be rendered (the "Judgment Currency"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the recipient could purchase in The City of New York the Required Currency with the Judgment Currency on the day on which final unappealable judgment is entered, unless such day is not a New York Banking Day, then the rate of exchange used shall be the rate at which in accordance with normal banking procedures the recipient could purchase in The City of New York the Required Currency with the Judgment Currency on the New York Banking Day preceding the day on which final unappealable judgment is entered and (b) its obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, any recovery pursuant to any judgment (whether or not entered in accordance with subsection (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable with respect to such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable, and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture. For purposes of the foregoing, "New York Banking Day" means any day except a Saturday, Sunday or a Legal Holiday in The City of New York on which banking institutions are authorized or required by law, regulation or executive order to close.

Section 10.15. English Language.

This Indenture has been negotiated and executed in the English language. All certificates, reports, notices and other documents and communications delivered or delivered pursuant to this Indenture (including any modifications or supplements hereto), shall be in the

English language, or accompanied by a certified English translation thereof. In the case of any document originally issued in a language other than English, the English language version of any such document shall for purposes of this Indenture, and absent manifest error, control the meaning of the matters set out therein.

Section 10.16. Submission to Jurisdiction; Appointment of Agent.

Any suit, action or proceeding against the Company or its respective properties, assets or revenues with respect to this Indenture or the Securities (a "*Related Proceeding*") may be brought in any state or Federal court in the Borough of Manhattan in The City of New York, New York, as the Person bringing such Related Proceeding may elect in its sole discretion. The Company hereby consents to the non-exclusive jurisdiction of each such court for the purpose of any Related Proceeding and has irrevocably waived any objection to the laying of venue of any Related Proceeding brought in any such court and to the fullest extent it may effectively do so and the defense of an inconvenient forum to the maintenance of any Related Proceeding or any such suit, action or proceeding in any such court. The Company hereby agrees that service of all writs, claims, process and summonses in any Related Proceeding brought against it in the State of New York may be made upon Colfax Corporation, 420 National Business Parkway, 5th Floor, Annapolis Junction, Maryland 20701 Attention: Corporate Secretary (the "*Process Agent*"). The Company irrevocably appointed the Process Agent as its agent and true and lawful attorney in fact in its name, place and stead to accept such service of any and all such writs, claims, process and summonses, and hereby agrees that the failure of the Process Agent to give any notice to it of any such service of process shall not impair or affect the validity of such service or of any judgment based thereon. The Company hereby agrees to have an office or to maintain at all times an agent with offices in the United States of America to act as Process Agent. Nothing in this Indenture shall in any way be deemed to limit the ability to serve any such writs, process or summonses in any other manner permitted by applicable law.

Section 10.17. Waiver of Immunity.

To the extent that the Company has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution or execution, on the ground of sovereignty or otherwise) with respect to itself or its property, it hereby irrevocably waives, to the fullest extent permitted by applicable law, such immunity with respect to its obligations under this Indenture, and, Securities.

Section 10.18. Waiver of Jury Trial.

EACH OF THE COMPANY AND THE TRUSTEE HERETO HEREBY IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 10.19. Conflict with Trust Indenture Act.

If and to the extent that any provision of this Indenture limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

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

Colfax Corporation

By: /s/ Christopher Hix

Name: Christopher Hix

Its: Senior Vice President, Finance, Chief Financial
Officer and Treasurer

U.S. Bank National Association, as Trustee

By: /s/ Philip G. Kane, Jr.

Name: Philip G. Kane, Jr.

Title: Vice President

COLFAX CORPORATION,

as Issuer,

AND

U.S. BANK NATIONAL ASSOCIATION,

as Trustee

First Supplemental Indenture

Dated as of January 11, 2019

to the Indenture

Dated as of January 11, 2019

6.50% Senior Amortizing Notes due 2022

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A:	Form of Note	

FIRST SUPPLEMENTAL INDENTURE dated as of January 11, 2019 (this “**Supplemental Indenture**”) between COLFAX CORPORATION, a Delaware corporation (the “**Company**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as trustee (the “**Trustee**”), supplementing the Indenture dated as of January 11, 2019 between the Company and the Trustee (the “**Base Indenture**”).

RECITALS OF THE COMPANY:

WHEREAS, the Company executed and delivered the Base Indenture to provide for, among other things, the issuance of unsecured debt securities in an unlimited aggregate principal amount to be issued from time to time in one or more series as provided in the Base Indenture;

WHEREAS, the Base Indenture provides that the Company may enter into an indenture supplemental to the Base Indenture to establish the form and terms of any series of Securities as provided by Section 2.2 of the Base Indenture;

WHEREAS, the Company desires and has requested the Trustee to join it in the execution and delivery of this Supplemental Indenture in order to establish and provide for the issuance by the Company of a series of Securities designated as its 6.50% Senior Amortizing Notes due 2022 (the “**Notes**”, and each \$15.6099 of initial principal amount of such Securities, a “**Note**”), substantially in the form attached hereto as Exhibit A, on the terms set forth herein;

WHEREAS, the Company now wishes to issue Notes in an aggregate initial principal amount of \$71,805,540, each Note initially to be issued as a component of the Units (as defined herein) being issued on the date hereof by the Company pursuant to the Purchase Contract Agreement, dated as of January 11, 2019, between the Company and U.S. Bank National Association, as Purchase Contract Agent, as Trustee and as attorney-in-fact for the holders of Purchase Contracts from time to time (the “**Purchase Contract Agreement**”); and

WHEREAS, the Company has requested that the Trustee execute and deliver this Supplemental Indenture, and all requirements necessary to make (i) this Supplemental Indenture a valid instrument in accordance with its terms and (ii) the Notes, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company, have been performed, and the execution and delivery of this Supplemental Indenture have been duly authorized in all respects.

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH, for and in consideration of the premises and the purchases of the Notes by the Holders thereof, it is mutually agreed, for the benefit of the parties hereto and the equal and proportionate benefit of all Holders of the Notes, as follows:

ARTICLE 1

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 *Scope of Supplemental Indenture; General.* The changes, modifications and supplements to the Base Indenture effected by this Supplemental Indenture shall be applicable only with respect to, and govern the terms of, the Notes (which shall be initially in the

aggregate initial principal amount of \$71,805,540) and shall not apply to any other Securities that may be issued under the Base Indenture unless a supplemental indenture with respect to such other Securities specifically incorporates such changes, modifications and supplements. This Supplemental Indenture shall supersede any corresponding provisions in the Base Indenture.

Section 1.02 *Definitions*. For all purposes of the Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (i) the terms defined in this Article 1 shall have the meanings assigned to them in this Article and include the plural as well as the singular;
- (ii) all words, terms and phrases defined in the Base Indenture (but not otherwise defined herein) shall have the same meaning herein as in the Base Indenture;
- (iii) all other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, shall have the meanings assigned to them therein; and
- (iv) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision.

“**Agent Members**” has the meaning ascribed to such term in Section 2.01(d).

“**Base Indenture**” has the meaning ascribed to it in the preamble hereof.

“**Beneficial Holder**” means, with respect to a Global Note, a Person who is the beneficial owner of such Book-Entry Interest as reflected on the books of the Depository or on the books of a Person maintaining an account with the Depository (directly as a Depository Participant or as an indirect participant, in each case in accordance with the rules of the Depository).

“**Book-Entry Interest**” means a beneficial interest in a Global Note, registered in the name of a Depository or a nominee thereof, ownership and transfers of which shall be maintained and made through book entries by such Depository.

“**Business Day**” means any day other than a Saturday, Sunday or any day on which banking institutions in New York, New York are authorized or obligated by applicable law or executive order to close or be closed.

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

“**close of business**” means 5:00 p.m. (New York City time).

“**Common Stock**” means the common stock, par value \$0.001 per share, of the Company or such other securities or assets as shall be deliverable in replacement thereof under the Purchase Contract Agreement pursuant to the terms thereof.

“**Company**” has the meaning ascribed to it in the preamble hereof and shall also refer to any successor obligor under the Indenture.

“**Component Note**” means a Note in global form and attached to a Global Unit that (a) shall evidence the number of Notes specified therein that are components of the Units evidenced by such Global Unit, (b) shall be registered on the Security Register for the Notes in the name of the Purchase Contract Agent, as attorney-in-fact of holder(s) of the Units of which such Notes form a part, and (c) shall be held by the Purchase Contract Agent as attorney-in-fact for such holder(s), together with the Global Unit, as custodian of such Global Unit for the Depository.

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

“**Depository Participant**” means a broker, dealer, bank, other financial institution or other Person for whom from time to time the Depository effects book-entry transfers of securities deposited with the Depository.

“**Fundamental Change**” has the meaning ascribed to such term in the Purchase Contract Agreement.

“**Global Note**” means any Note that is a Global Security.

“**Global Unit**” has the meaning ascribed to such term in the Purchase Contract Agreement.

“**Holder**” means the Person in whose name a Note is registered on the Registrar’s books.

“**Indenture**” means the Base Indenture, as supplemented by this Supplemental Indenture as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental thereto entered into pursuant to the applicable provisions thereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern the Base Indenture, this Supplemental Indenture and any such supplemental indenture, respectively.

“**Initial Principal Amount**” means \$15.6099 initial principal amount per Note.

“**Installment Payment**” has the meaning ascribed to it in Section 2.02(a).

“**Installment Payment Date**” means each January 15, April 15, July 15 and October 15, commencing on April 15, 2019 and ending on the Maturity Date.

“**Installment Payment Period**” means (i) in the case of the first Installment Payment Date on April 15, 2019, the period from, and including, the Issue Date to, but excluding, such first Installment Payment Date and (ii) in the case of any other Installment Payment Date, the quarterly period from, and including, the immediately preceding Installment Payment Date to, but excluding, such other Installment Payment Date.

“**Issue Date**” means January 11, 2019.

“**Maturity Date**” means January 15, 2022.

“**Merger Termination Redemption**” has the meaning ascribed to it in the Purchase Contract Agreement.

“**Merger Termination Redemption Notice**” has the meaning ascribed to it in the Purchase Contract Agreement.

“**Merger Termination Redemption Settlement Date**” has the meaning ascribed to it in the Purchase Contract Agreement.

“**Note**” and “**Notes**” have the respective meanings ascribed to such terms in the preamble hereof and include, for the avoidance of doubt, both Separate Notes and Notes that constitute part of a Unit.

“**Paying Agent**” means any Person (including the Company) authorized by the Company to pay the principal amount of or interest on any Notes on behalf of the Company. The Paying Agent shall initially be the Trustee.

“**Prospectus Supplement**” means the amended preliminary prospectus supplement dated January 8, 2019, as supplemented by the related pricing term sheet dated January 8, 2019, relating to the offering and sale of the Notes.

“**Purchase Contract**” means a prepaid stock purchase contract obligating the Company to deliver shares of Common Stock on the terms and subject to the conditions set forth in the Purchase Contract Agreement.

“**Purchase Contract Agent**” means U.S. Bank National Association, as purchase contract agent under the Purchase Contract Agreement, until a successor Purchase Contract Agent shall have become such pursuant to the applicable provisions of the Purchase Contract Agreement, and thereafter “**Purchase Contract Agent**” shall mean such Person.

“**Purchase Contract Agreement**” has the meaning ascribed to it in the preamble hereof.

“**Repurchase Date**” shall be a date specified by the Company in the Merger Termination Redemption Notice, which date shall be at least 20 but not more than 35 Business Days following the date of the Merger Termination Redemption Notice (and which may or may not fall on the Merger Termination Redemption Settlement Date).

“**Repurchase Notice**” means a notice in the form entitled “Form of Repurchase Notice” attached to the Notes.

“**Repurchase Price**” means, with respect to a Note to be repurchased pursuant to Article 8, an amount equal to the principal amount of such Note as of the Repurchase Date, *plus* accrued and unpaid interest, if any, on such principal amount from, and including, the immediately preceding Installment Payment Date (or, if none, from, and including, the Issue Date) to, but not

including, such Repurchase Date, calculated at an annual rate of 6.50%; *provided* that, if the Repurchase Date falls after a Regular Record Date for any Installment Payment and on or prior to the immediately succeeding Installment Payment Date, the Installment Payment payable on such Installment Payment Date will be paid on such Installment Payment Date to the holder as of such Regular Record Date and will not be included in the Repurchase Price per Note.

“**Repurchase Right**” has the meaning ascribed to it in Section 8.01.

“**SEC**” means the U.S. Securities and Exchange Commission.

“**Separate Note**” means a Note that has been separated from a Unit in accordance with the terms of the Purchase Contract Agreement.

“**Separate Purchase Contract**” means a Purchase Contract that has been separated from a Unit in accordance with the terms of the Purchase Contract Agreement.

“**Supplemental Indenture**” has the meaning ascribed to it in the preamble hereof.

“**Trustee**” means the party named in the preamble hereof until a successor replaces such party in accordance with the applicable provisions of the Indenture and thereafter means the successor serving hereunder.

“**Unit**” means the collective rights of a holder of a 5.75% Tangible Equity Unit, with a stated amount of \$100 (representing an issue price of \$15.6099 for the Note included in each Unit and an issue price of \$84.3901 for the Purchase Contract included in each Unit), issued by the Company pursuant to the Purchase Contract Agreement, each consisting of a single Purchase Contract and a single Note prior to separation or subsequent to recreation thereof pursuant to the Purchase Contract Agreement.

ARTICLE 2

THE SECURITIES

Section 2.01 *Title and Terms.*

(a) There is hereby authorized a series of Securities designated the “6.50% Senior Amortizing Notes due 2022” limited in aggregate initial principal amount to \$71,805,540, which amount shall be as set forth in any written order of the Company for authentication and delivery of Notes pursuant to Section 2.3 of the Base Indenture.

(b) The Notes will initially be issued as Component Notes in substantially the form of Attachment 4 to the form of Global Unit attached as Exhibit A to the Purchase Contract Agreement, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by the 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 of the Company executing such Notes, as evidenced by their execution of the Notes. The Notes will initially be attached to the related Global Unit and registered in the name of U.S. Bank National Association, as attorney-in-fact of the holder(s) of such Global Unit.

(c) Holders of Units have the right to separate such Units into their constituent parts, consisting of Separate Purchase Contracts and Separate Notes, during the times, and under the circumstances, described in Section 2.03 of the Purchase Contract Agreement. Upon separation of any Unit into its constituent parts, (i) if such Unit is a Global Unit, the Separate Notes will initially be evidenced by a Global Note (the “**Global Note**”) in substantially the form of Exhibit A hereto, which is incorporated into and shall be deemed a part of this Supplemental Indenture, and deposited with the Trustee as custodian for the Depositary and registered in the name of the Depositary or its nominee, or (ii) if such Unit is in definitive, registered form, the Separate Notes will be evidenced by Certificated Notes in substantially the form of Exhibit A hereto, in each case, as provided in Section 2.03 of the Purchase Contract Agreement. Following separation of any Unit into its constituent Separate Note and Separate Purchase Contract, the Separate Notes are transferable independently from the Separate Purchase Contracts. In addition, Separate Notes can be recombined with Separate Purchase Contracts to recreate Units, as provided for in Section 2.04 of the Purchase Contract Agreement.

(d) The Global Note representing Separate Notes (which shall initially have a balance of zero Notes) shall be registered in the name of Cede & Co., as nominee of the Depositary and delivered to the Trustee, as custodian for the Depositary. Members of, or participants in, the Depositary (“**Agent Members**”) shall have no rights under this Supplemental Indenture or the Base Indenture with respect to any Global Note (or any Global Unit in the case of Component Notes) held on their behalf by the Depositary, or the Trustee as its custodian, or under the Global Note (or such Global Unit), and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the Global Note (or such Global Unit) for all purposes whatsoever. None of the Trustee, the Registrar, any Paying Agent or any agent of any of them shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the Notes, for maintaining, supervising or reviewing any records relating to such beneficial owner interests, or for any acts or omissions of the Depositary or for any transactions between the Depositary and any beneficial owner or between or among beneficial owners. Notwithstanding the foregoing in this paragraph, nothing herein shall prevent the Company, the Trustee, the Registrar, any Paying Agent or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of any Holder.

(e) The Notes shall be issuable in denominations of initial principal amounts equal to the Initial Principal Amount and integral multiples in excess thereof.

Section 2.02 *Installment Payments*. (a) The Company shall pay installments on the Notes (each such payment, an “**Installment Payment**”) in cash at the place, at the respective times and in the manner provided in the Notes. The Company has initially designated the Trustee as its Paying Agent and Registrar in respect of the Notes and its agency in New York, New York as a place where Notes may be presented for payment or for registration of transfer. The Company may, however, change the Paying Agent or Registrar for the Notes without prior notice to the Holders thereof, and the Company may act as Paying Agent or Registrar.

(b) On the first Installment Payment Date occurring on April 15, 2019, the Company shall pay, in cash, an Installment Payment with respect to each Note in an amount equal to \$1.5014 per Note, and on each Installment Payment Date thereafter, the Company shall pay, in cash, equal quarterly Installment Payments with respect to each Note in an amount equal to \$1.4375 per Note; *provided* that, in respect of any Certificated Note, the final Installment Payment shall be made only against surrender of such Certificated Note to the Paying Agent.

(c) Each Installment Payment shall constitute a payment of interest (at a rate of 6.50% per annum) and a partial repayment of principal on the Notes, allocated with respect to each Note as set forth in the schedule below:

<u>Installment Payment Date</u>	<u>Amount of Principal</u>	<u>Amount of Interest</u>
April 15, 2019	\$ 1.2365	\$ 0.2649
July 15, 2019	\$ 1.2039	\$ 0.2336
October 15, 2019	\$ 1.2235	\$ 0.2140
January 15, 2020	\$ 1.2434	\$ 0.1941
April 15, 2020	\$ 1.2636	\$ 0.1739
July 15, 2020	\$ 1.2841	\$ 0.1534
October 15, 2020	\$ 1.3050	\$ 0.1325
January 15, 2021	\$ 1.3262	\$ 0.1113
April 15, 2021	\$ 1.3477	\$ 0.0898
July 15, 2021	\$ 1.3696	\$ 0.0679
October 15, 2021	\$ 1.3919	\$ 0.0456
January 15, 2022	\$ 1.4145	\$ 0.0230

(d) Each Installment Payment for any Installment Payment Period shall be computed on the basis of a 360-day year of twelve 30-day months. If an Installment Payment is payable for any period shorter than a full Installment Payment Period, such Installment Payment shall be computed on the basis of the actual number of days elapsed per 30-day month. Furthermore, if any date on which an Installment Payment is payable is not a Business Day, then payment of the Installment Payment on such date shall be made on the next succeeding day that is a Business Day, and without any interest or other payment in respect of any such delay.

Section 2.03 *Maturity Date*. The date on which the final Installment Payment on the Notes shall be due, unless the Notes are accelerated pursuant to the terms hereof or otherwise paid prior to maturity in connection with a Holder's exercise of the Repurchase Right, shall be the Maturity Date (subject, for the avoidance of doubt, to the last sentence of Section 2.02(d) above).

Section 2.04 *Right to Exchange or Register a Transfer*. (a) The Company shall not be required to exchange or register a transfer of any Note if the Holder thereof has exercised his, her or its right, if any, to require the Company to repurchase such Note in whole or in part, except the portion of such Note not required to be repurchased.

(b) For purposes of any Note that constitutes part of a Unit, Section 2.7 and Section 2.14.1 of the Base Indenture (as modified by this Supplemental Indenture) shall be subject to the provisions of the Purchase Contract Agreement.

ARTICLE 3

[RESERVED]

ARTICLE 4

REPORTS

Section 4.01 *Amendments to Article IV of the Base Indenture*.

(a) For purposes of the Notes, Section 4.7(a) of the Base Indenture shall be amended and replaced in its entirety to the following:

“So long as any Notes are outstanding, the Company shall file with the Trustee, within 15 days after the Company is required to file the same with the SEC (after giving effect to any grace period provided by Rule 12b-25 under the Exchange Act), copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may from time to time by rules and regulations prescribe) which the Company may be required to file with the SEC pursuant to Section 13 or Section 15(d) of the Exchange Act. For purposes of this section, documents filed by the Company with the SEC via EDGAR system will be deemed to be filed with the Trustee as of the time such documents are filed via EDGAR, *provided, however*, that the Trustee shall have no obligation whatsoever to determine if such filing has occurred.”

(b) Sections 4.5 and 4.6 of the Base Indenture shall not apply to the Notes.

ARTICLE 5

CONSOLIDATION, MERGER AND SALE OF ASSETS

Section 5.01 *Amendments to Article V of the Base Indenture*.

(a) For purposes of the Notes, Section 5.1 of the Base Indenture shall be amended and replaced in its entirety to the following:

“(a) The Company may not consolidate with or merge with or into or wind up into, whether or not the Company is the surviving corporation, or sell, assign, convey, transfer or lease the Company’s properties and assets substantially as an entirety to any other Person, in one transaction or a series of transactions, unless:

(i) the successor corporation formed by the consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases the Company's properties and assets substantially as an entirety, (x) is an entity organized and existing under the laws of the United States or any State thereof or the District of Columbia and (y) expressly assumes by an indenture supplemental to this Indenture the due and punctual payment of all Installment Payments on the Notes and the performance of every Covenant in this Indenture on the Company's part to be performed or observed; and

(ii) immediately after giving effect to such transaction, no Event of Default under this Indenture, and no event which, after notice or lapse of time, or both, would become an Event of Default, has happened and is continuing,

(b) Upon any consolidation or merger or winding up into or sale, assignment, conveyance, transfer or lease of the Company's assets substantially as an entirety to any Person, as the case may be, the successor Person formed by such consolidation or into or with which the Company is merged or wound up or to which such sale, assignment, conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person has been named as the Company herein. In the event of any such transfer the Company or any successor entity which shall theretofore have become such in the manner described in this Section 5.1(b), shall be discharged from all obligations and covenants under this Indenture and the Securities and may be liquidated and dissolved; *provided that, however,* in the case of a qualifying lease of all or substantially all of the Company's assets, the Company will not be released from, and the successor corporation will not succeed to, the obligation to pay the Installment Payments on the Notes.

(c) An Officer's Certificate and an Opinion of Counsel will be delivered to the Trustee, which will serve as conclusive evidence of compliance with this Section 5.1."

ARTICLE 6

DEFAULTS AND REMEDIES

Section 6.01 *Amendments to Article VI of the Base Indenture.*

(a) For purposes of the Notes, Section 6.1 of the Base Indenture shall be amended and replaced in its entirety to the following:

“(a) the Company defaults in the payment of the Repurchase Price of any Notes when the same shall become due and payable;

(b) the Company defaults in the payment of any Installment Payment on any Notes as and when the same shall become due and payable and such failure continues for a period of 30 days;

(c) the Company fails to give notice of a Fundamental Change when any such notice is due pursuant to the terms of the Purchase Contract Agreement;

(d) the Company fails to comply with any of the Company's other covenants or agreements, or provisions of, the Notes or Indenture and such failure continues for the period and after the notice specified below, subject to extension pursuant to Section 6.15 of the Base Indenture in connection with any failure to comply with the covenant described under Section 4.7 of the Base Indenture;

(e) default by the Company or any of its Subsidiaries with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of \$150 million (or its foreign currency equivalent) in the aggregate of the Company and/or any such Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal or interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, and such acceleration is not cured, waived, rescinded, stayed or annulled or such indebtedness is not discharged, as applicable, within a period of 30 calendar days after written notice of such indebtedness becoming due and payable or such failure, as the case may be, has been received from the Trustee or the Holders of at least 25% in principal amount of the Notes then outstanding;

(f) a final judgment or judgments that exceed \$150 million or more, individually or in the aggregate, for the payment of money having been entered by a court or courts of competent jurisdiction against the Company and such judgment or judgments is not satisfied, stayed, annulled or rescinded within 60 calendar days of being entered;

(g) the Company pursuant to or within the meaning of any Bankruptcy Law: (1) commences a voluntary case, (2) consents to the entry of an order for relief against it in an involuntary case, (3) consents to the appointment of a Custodian of it or for all or substantially all of its property, (4) makes a general assignment for the benefit of its creditors, or (5) generally is unable to pay its debts as the same become due; or

(h) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law, which order or decree remains unstayed and in effect for 60 days, that: (1) is for relief against the Company in an involuntary case, (2) appoints a Custodian of the Company or for all or substantially all of its property, or (3) orders the liquidation of the Company, and the order or decree remains unstayed and in effect for 60 days. The term "Significant Subsidiary" has the meaning set forth in Rule 1-02 of Regulation S-X under the Exchange Act."

The term “Bankruptcy Law” means title 11, U.S. Code or any similar Federal or State law for the relief of debtors. The term “Custodian” means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

A default as described in Section 6.1(d) will not be deemed an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in principal amount of the then outstanding Notes notify the Company and the Trustee in writing, of the Default and the Company does not cure the Default within 60 calendar days after receipt of the notice. The notice must specify the Default, demand that it be remedied and state that the notice is a “Notice of Default.” If such a default is cured within such time period, it ceases.

With the exception of defaults under Section 6.1(a) or (b), the Trustee will not be charged with knowledge of any Default or Event of Default or knowledge of any cure of any Default or Event of Default unless a Responsible Officer has received written notice of such Default or Event of Default from the Company or Holders of 25% of the outstanding Notes.”

(b) For purposes of the Notes, the first paragraph of Section 6.2 of the Base Indenture shall be amended in its entirety to the following:

(i) “If an Event of Default occurs and is continuing (other than an Event of Default referred to in Section 6.1(g) or (h)), the Trustee by written notice the Company, or the Holders of at least 25% in principal amount of the Notes then outstanding by written notice to the Company and the Trustee, may declare all Notes to be due and payable immediately. Upon such declaration of acceleration, all future, scheduled Installment Payments on the Notes will be due and payable immediately. If an Event of Default referred to in Section 6.1(g) or (h) occurs, such an amount will become automatically and immediately due and payable without any declaration, notice or other act on the part of the Trustee or any Holder.”

(c) For purposes of the Notes, the second paragraph of Section 6.2 of the Base Indenture shall be amended in its entirety to the following:

(i) “At any time after such declaration of acceleration with respect to any Notes 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 VI provided; the Holders of a majority in principal amount of the then outstanding Note may rescind an acceleration and its consequence (except an acceleration due to nonpayment of Installment Payments on the Notes), if the rescission would not conflict with any judgment or decree, if all existing Events of Default (other than the non-payment of accelerated Installment Payments) have been cured or waived as provided in Section 6.13 and if there has been deposited with the Trustee a sum sufficient to pay its fees and expenses in connection with such Event of Default.”

(d) For purposes of the Notes, Section 6.13 of the Base Indenture shall be amended and replaced in its entirety to the following:

(i) “The Holders of a majority in principal amount of the Note then outstanding by written notice to the Trustee and the Company may waive any continuing Default or Event of Default (other than any Default or Event of Default in payment of Installment Payments) on the Notes under the Indenture (*provided, however*, that the Holders of a majority in principal amount of the outstanding Notes may rescind an acceleration and its consequences (except an acceleration due to nonpayment of Installment Payments on the Notes), including any related payment default that related from such acceleration). Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.”

(e) For purposes of the Notes, Section 6.10 of the Base Indenture shall be amended in its entirety to the following:

“Section 6.10. Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.8 and with respect to the Event of Default Relating to Failure to Comply with Section 4.7 and Section 7.10 in Section 6.15, 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, to the extent permitted by law, prevent the concurrent assertion or employment of any other appropriate right or remedy.”

ARTICLE 7

CONCERNING THE TRUSTEE

Section 7.01 *Amendments to Article VII of the Base Indenture.*

(a) For purposes of the Notes, Section 7.5 of the Base Indenture shall be amended and restated in its entirety to the following:

“The Trustee, within 30 calendar days after the occurrence of a Default with respect to the Notes, will mail or send to all Holders, at the Company’s expense, notice of all such Defaults actually known to a Responsible Officer, unless such Defaults shall have been cured or waived before the giving of such notice. However, the Trustee may withhold from the Holders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment of Installment Payments or that resulted from the failure to comply with any obligations described under Section 4.07 of the Purchase Contract Agreement) if the Trustee determines that withholding such notice is in the Holders’ interest.”

SATISFACTION AND DISCHARGE AND DEFEASANCE

Section 8.01 *Amendments to Section 8.1 of the Base Indenture.*

(a) For purposes of the Notes, Section 8.1 of the Base Indenture shall be amended and restated in its entirety to the following:

“Section 8.1. Discharge and Defeasance.

(a) Subject to subsection 8.1(e) below, the Company’s obligations under the Notes and the Indenture will terminate if:

(i) all Notes previously authenticated and delivered (other than destroyed, lost or stolen Notes that have been replaced) have been delivered to the Trustee for cancellation and the Company has paid all sums payable by it hereunder; or

(ii) (1) the Maturity Date occurs within one year,

(2) the Company irrevocably deposits in trust with the Trustee, in trust solely for the benefit of the Holders, money or U.S. Government Obligations or a combination thereof sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certificate delivered to the Trustee, without consideration of any reinvestment, to pay principal of and interest on the Notes to the Maturity Date and to pay all other sums payable by it hereunder,

(3) no Event of Default has occurred and is continuing on the date of the deposit, and

(4) the Company delivers to the Trustee an Officer’s Certificate and an Opinion of Counsel, in each case stating that all conditions precedent provided for herein relating to the satisfaction and discharge of the Indenture have been complied with.

(b) The Company shall, subject to subsection 8.1(e) below and the satisfaction of the conditions set forth in subsection 8.1(d) below, be deemed to have been discharged from its obligations with respect to the Notes on the date the conditions set forth below are satisfied (hereinafter, “*Legal Defeasance*”). For this purpose, *Legal Defeasance* means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Notes, which shall thereafter be deemed to be Outstanding only for the purposes of Section 8.2 hereof and the other Sections of this Indenture referred to in subsection 8.1(e) below, and to have satisfied all of its obligations under the Notes and this Indenture (and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments delivered to it by the Company acknowledging the same). The Company may exercise *Legal Defeasance* with respect to the Notes notwithstanding the prior exercise of *Covenant Defeasance* with respect to the Notes.

(c) The Company shall, subject to subsection 8.1(e) below and the satisfaction of the conditions set forth in subsection 8.1(d), be released from its obligations under Section 5.1 (other than Section 5.1(a)(i)(y)), on and after the date that the conditions set forth in subsection 8.1(d) below are satisfied with respect to the Notes (hereinafter, “*Covenant Defeasance*”), the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to such covenant or by reason of any reference in such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.1, but, except as specified above, the remainder of this Indenture and the Notes shall be unaffected thereby. Subject to the satisfaction of the conditions set forth in subsection 8.1(d) and the exceptions set forth in subsection 8.1(e), clauses (c), (d), (e), (f), (g) and (h) of Section 6.1, shall not constitute Defaults or Events of Default hereunder.

(d) In order to exercise either Legal Defeasance or Covenant Defeasance:

(i) the Company must irrevocably deposit, or cause to be deposited, with the Trustee, in trust, for the benefit of the Holders of the Notes, cash in U.S. dollars, U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay, without reinvestment, the principal of, and interest on, the Outstanding Notes (in the form of Installment Payments) on the applicable due dates therefor;

(ii) in the case of Legal Defeasance, the Company must deliver to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee or an Internal Revenue Service ruling, in either case to the effect that the Holders of the Notes and beneficial owners thereof will not recognize income, gain or loss for United States federal income tax purposes as a result of such Legal Defeasance, and will be subject to United States federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(iii) in the case of Covenant Defeasance, the Company must deliver to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee or an Internal Revenue Service ruling, in either case to the effect that the Holders of the Outstanding Notes and beneficial owners thereof will not recognize income, gain or loss for United States federal income tax purposes as a result of such Covenant Defeasance, and such Holders will be subject to United States federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(iv) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) or insofar as Events of Default from bankruptcy or insolvency events are concerned, at any time in the period ending on the 91st day after the date of deposit;

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

(vi) the Company must deliver to the Trustee an Officer's Certificate and an Opinion of Counsel in the United States reasonably acceptable to the Trustee, each stating that the conditions precedent provided for or relating to Legal Defeasance or Covenant Defeasance, as applicable, in the Indenture have been complied with.

(e) Notwithstanding the foregoing, no discharge, Legal Defeasance or Covenant Defeasance pursuant to this Article 8 shall affect the following obligations to, or rights of, the Holders of the Notes:

(i) the rights of registration of transfer and exchange of the Notes;

(ii) the Company's obligations with respect to the Notes concerning mutilated, destroyed, lost or stolen Notes;

(iii) the rights of Holders of Notes to receive payments in respect of the principal thereof and interest thereon (in the form of Installment Payments), upon the original due dates therefor, but not upon acceleration;

(iv) the rights, powers, trusts, duties, indemnities and immunities of the Trustee, and the Company's obligations in connection therewith;

(v) the rights of Holders of Notes that are beneficiaries with respect to property so deposited with the Trustee payable to all or any of them; and

(vi) the maintenance of an office or agency for payment and money for payments held in trust."

ARTICLE 9

NO REDEMPTION

Section 9.01 *Article III of the Base Indenture Inapplicable*. The Notes shall not be redeemable and Article III of the Base Indenture shall not apply to the Notes.

REPURCHASE OF NOTES AT THE OPTION OF THE HOLDER

Section 10.01 *Offer to Repurchase*. If the Company causes a Merger Termination Redemption of all of the Purchase Contracts pursuant to the terms of the Purchase Contract Agreement, then each Holder of Notes (whether any such Note is a Separate Note or constitutes part of a Unit) shall have the right (the “**Repurchase Right**”) to require the Company to repurchase some or all of its Notes for cash at the Repurchase Price per Note to be repurchased on the Repurchase Date, pursuant to Section 10.03. The Company shall not be required to repurchase a portion of a Note. Holders shall not have the right to require the Company to repurchase any or all of such Holders’ Notes in connection with any Early Settlement (as such term is defined in the Purchase Contract Agreement) of such Holders’ Purchase Contracts at the Holders’ option pursuant to the terms of the Purchase Contract Agreement.

Section 10.02 [Reserved].

Section 10.03 *Procedures for Exercise*.

(a) To exercise the Repurchase Right, a Holder must deliver, prior to the close of business on the Business Day immediately preceding the Repurchase Date, the Notes to be repurchased (or the Units that include the Notes to be repurchased, if (x) the Merger Termination Redemption Settlement Date occurs on or after the Repurchase Date and (y) the relevant Notes have not been separated from the Units), together with a duly completed written Repurchase Notice, in each case, subject to and in accordance with applicable procedures of the Depositary, unless the Notes are not in the form of a Global Note (or the Units are not in the form of Global Units, as the case may be), in which case such Holder must deliver the Notes to be repurchased (or the Units that include the Notes to be repurchased, if (i) the Merger Termination Redemption Settlement Date occurs on or after the Repurchase Date and (ii) the Notes have not been separated from the Units), duly endorsed for transfer to the Company, together, in either case, with a Repurchase Notice, to the Paying Agent.

(b) The Repurchase Notice must state the following:

(i) if Certificated Notes (or Units) have been issued, the certificate numbers of the Notes (or Units), or if the Notes (or Units) are in the form of a Global Note (or a Global Unit), the Repurchase Notice must comply with appropriate procedures of the Depositary;

(ii) the number of Notes to be repurchased; and

(iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Article 10 of the First Supplemental Indenture.

(c) In the event that a Merger Termination Redemption occurs with respect to Purchase Contracts that are a component of Units and the Merger Termination Redemption Settlement Date occurs prior to the Repurchase Date, upon such Merger Termination Redemption Settlement Date, the Company shall execute and the Trustee shall authenticate on behalf of the holder of the Units and deliver to such holder, at the expense of the Company, Separate Notes in the same form and in the same number as the Notes comprising part of the Units.

Section 10.04 *Withdrawal of Repurchase Notice.*

(a) A Holder may, subject to and in accordance with applicable procedures of the Depository, in the case of a Global Note or Global Unit, withdraw any Repurchase Notice (in whole or in part) by a written, irrevocable notice of withdrawal delivered to the Paying Agent, with a copy to the Trustee and the Company, prior to the close of business on the Business Day immediately preceding the Repurchase Date.

(b) The notice of withdrawal must state the following:

(i) the number of the withdrawn Notes;

(ii) if Certificated Notes (or Units) have been issued, the certificate numbers of the withdrawn Notes (or Units), or if the Notes (or Units) are in the form of a Global Note (or a Global Unit), the notice of withdrawal must comply with appropriate Depository procedures; and

(iii) the number of Notes, if any, that remain subject to the Repurchase Notice.

Section 10.05 *Effect of Repurchase.* (a) The Company shall be required to repurchase the Notes with respect to which the Repurchase Right has been validly exercised and not withdrawn on the Repurchase Date. To effectuate such repurchase, the Company shall deposit immediately available funds with the Paying Agent, on or prior to 11:00 a.m., New York City time, on the Repurchase Date, in an amount or amounts sufficient to pay the Repurchase Price with respect to those Notes for which the Repurchase Right has been exercised. A Holder electing to exercise the Repurchase Right shall receive payment of the Repurchase Price on the later of (i) the Repurchase Date and (ii) the time of book-entry transfer or the delivery of the Notes (or Units, as applicable).

(b) If the Paying Agent holds money on the Repurchase Date sufficient to pay the Repurchase Price with respect to those Notes for which the Repurchase Right has been exercised, then (i) such Notes shall cease to be outstanding and interest shall cease to accrue thereon (whether or not book-entry transfer of the Notes or Units, as applicable, is made or whether or not the Notes or Units, as applicable, are delivered as required herein), and (ii) all other rights of the Holder shall terminate (other than the right to receive the Repurchase Price and, if the Repurchase Date falls between a Regular Record Date and the corresponding Installment Payment Date, the related Installment Payment).

(c) The Company shall, in connection with any repurchase offer pursuant to this Article 8, if required, comply with the provisions of the tender offer rules under the Exchange Act that may then be applicable.

(d) Notwithstanding anything to the contrary herein, no Notes may be repurchased at the option of Holders if the principal amount thereof has been accelerated, and such acceleration has not been rescinded, on or prior to the Repurchase Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Repurchase Price with respect to such Notes).

Section 10.06 *No Sinking Fund*. The Notes are not entitled to the benefit of any sinking fund.

ARTICLE 11

TAX TREATMENT

Section 11.01 *Tax Treatment*. The Company and each Beneficial Holder agree, for United States federal income tax purposes, to treat the Notes as indebtedness of the Company.

ARTICLE 12

AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 12.01 *Amendments to Article IX of the Base Indenture*.

(a) For purposes of the Notes, Section 9.1 of the Base Indenture shall be amended and replaced in its entirety to the following:

“Without notice to or the consent of any Holder of the Notes, the Company and the Trustee may amend or supplement this Indenture or the Notes in the following circumstances:

(1) to cure any ambiguity, omission, defect or inconsistency, provided that such amendments or supplements shall not adversely affect the interests of the Holders in any material respect;

(2) to provide for the assumption by a successor corporation of the Company’s obligations under this Indenture as provided for in Section 5.1;

(3) to comply with any requirement to effect or maintain the qualification of this Indenture under the Trust Indenture Act of 1939, as amended, if applicable;

(4) to evidence and provide for the acceptance of and appointment by a successor trustee with respect to the Notes, and to 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 under the Indenture by more than one trustee;

(5) to provide for uncertificated or unregistered Securities in addition to or in place of Certificated Securities and to make all appropriate changes for such purpose; provided, that all Notes are issued in registered form for purposes of Section 163(f) of the Internal Revenue Code of 1986, as amended;

(6) to provide any security for or guarantees of the Notes;

(7) to add covenants or Events of Default for the benefit of the Holders or to surrender any right or power the Company has under this Indenture or the Notes;

(8) to make any change that does not adversely affect the rights of any Holder in any material respect;

(9) to provide for the issuance of additional Notes in accordance with the limitations set forth in the Indenture; and

(10) to conform the provisions of this Indenture to the “Description of the Amortizing Notes” section in the Prospectus Supplement, as supplemented and/or amended by the related pricing term sheet.”

(b) For purposes of the Notes, Section 9.3 of the Base Indenture shall be amended in its entirety to the following:

“Without the consent of each Holder of Notes affected thereby, an amendment, supplement or waiver may not (with respect to any Notes held by a non-consenting Holder):

(1) change any Installment Payment Date or the amount owed on any Installment Payment Date;

(2) reduce the principal amount of the Notes or the rate of interest thereon;

(3) reduce the amount of the Notes whose Holders must consent to an amendment, supplement or waiver;

(4) make any change in the percentage of principal amount of the Notes necessary to waive compliance with Sections 6.8 and 6.13 of the Base Indenture or to make any change in this Section 9.3 of the Base Indenture.

(5) change the ranking of the Notes;

(6) make payments on the Notes payable in currency other than as originally stated in such Notes; and

(7) reduce the Repurchase Price or amend or modify in any manner adverse to the Holders of the Notes the Company’s obligation to make such payment.

It is not necessary for the consent of any Holder to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.”

(c) For the purpose of the Notes, Section 9.2 of the Base Indenture shall be amended and replaced in its entirety to the following:

“Section 9.2. With Consent of Holders

Without prior notice to any Holders, this Indenture or the Notes may be amended or supplemented, and waivers may be obtained, with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes voting as a single class. It is not necessary for the consent of any Holder to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

For the avoidance of doubt, any amendment, supplement or waiver to the Notes made with the consent of Holders of the Notes, shall be made with respect to the Notes only, and not any other Series of Securities.”

(d) For purposes of the Notes, Article IX of the Base Indenture shall be amended and supplemented by adding the following section after Section 9.7:

“Section 9.8. Notice of Amendment, Supplement and Waiver

After an amendment, supplement or waiver becomes effective, the Company shall give to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. The Company will mail or send supplemental indentures to Holders upon request. Any failure to mail or send such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.”

ARTICLE 13
MISCELLANEOUS

Section 13.01 *Governing Law and Jury Trial Waiver*. THIS SUPPLEMENTAL INDENTURE AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING AS AMONG THE COMPANY AND THE TRUSTEE ONLY ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE OR THE NOTES.

Section 13.02 *No Security Interest Created*. Nothing in this Supplemental Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 13.03 *Benefits of Indenture*. Nothing in this Supplemental Indenture, the Base Indenture or in the Notes, express or implied, shall give or be construed to give to any Person, other than the parties hereto and the Holders, any legal or equitable right, remedy or claim under or in respect of this Supplemental Indenture, or under any covenant, condition or provision herein contained; all such covenants, conditions and provisions being for the sole benefit of the parties hereto and of the Holders.

Section 13.04 *Effect on Successors and Assigns*. All the covenants, stipulations, promises and agreements in this Supplemental Indenture contained by or on behalf of the Company shall bind their respective successors and assigns, whether so expressed or not.

Section 13.05 *Effect of Headings and Table of Contents*. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 13.06 *Counterparts*. This 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.

Section 13.07 *Separability*. In case any one or more of the provisions contained in this 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 Supplemental Indenture or of the Notes, but this 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 13.08 *Ratification of Indenture*. The Indenture, as supplemented by this Supplemental Indenture, is in all respects ratified and confirmed, and this Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided. The provisions of this Supplemental Indenture shall, subject to the terms hereof, supersede the provisions of the Base Indenture to the extent the Base Indenture is inconsistent herewith.

Section 13.09 *Conflicts with Trust Indenture Act*. If and to the extent that any provision of this Supplemental Indenture limits, qualifies or conflicts with a provision required under the terms of the Trust Indenture Act, such Trust Indenture Act provision shall control.

[Remainder of the page intentionally left blank]

SIGNATURES

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

COLFAX CORPORATION, as the Company

By: /s/ Christopher Hix
Name: Christopher Hix
Title: Senior Vice President, Finance, Chief Financial
Officer and Treasurer

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: /s/ Philip G. Kane, Jr.
Name: Philip G. Kane, Jr.
Title: Vice President

[FORM OF FACE OF NOTE]

[THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN CERTIFICATED FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TRUST COMPANY (THE "DEPOSITARY") TO A NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

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

* Include only if a Global Note.

COLFAX CORPORATION
6.50% SENIOR AMORTIZING NOTES DUE 2022

CUSIP No.: []

ISIN No.: []

No. [] [Initial]* Number of Notes: []

COLFAX CORPORATION, a Delaware corporation (the “**Company**”, which term includes any successor under the Indenture hereinafter referred to), for value received, hereby promises to pay to [CEDE & CO., as nominee of The Depository Trust Company]† []‡, or registered assigns (the “**Holder**”), the initial principal amount of \$15.6099 for each of the number of Notes set forth above[, which number of Notes may from time to time be reduced or increased as set forth in Schedule A hereto, as appropriate, in accordance with the terms of the Indenture]§, in equal quarterly installments (except for the first such payment) (each such payment, an “**Installment Payment**”), constituting a payment of interest (at a rate of 6.50% per annum) and a partial repayment of principal, payable on each January 15, April 15, July 15 and October 15, commencing on April 15, 2019 (each such date, an “**Installment Payment Date**”, and the period from, and including, January 11, 2019 to, but excluding, the first Installment Payment Date and thereafter each quarterly period from, and including, the immediately preceding Installment Payment Date to, but excluding, the relevant Installment Payment Date, an “**Installment Payment Period**”) with the final Installment Payment due and payable on January 15, 2022, all as set forth on the reverse hereof and in the Indenture referred to on the reverse hereof.

Each Installment Payment for any Installment Payment Period shall be computed on the basis of a 360-day year of twelve 30-day months. If an Installment Payment is payable for any period shorter than a full Installment Payment Period, such Installment Payment shall be computed on the basis of the actual number of days elapsed per 30-day month. Furthermore, if any date on which an Installment Payment is payable is not a Business Day, then payment of the Installment Payment on such date shall be made on the next succeeding day that is a Business Day, and without any interest or other payment in respect of any such delay. Installment Payments shall be paid to the Person in whose name the Note is registered, with limited exceptions as provided in the Indenture, at the close of business on the Business Day immediately preceding the related Installment Payment Date (each, a “**Regular Record Date**”). If the Notes do not remain in book-entry only form, the Company shall have the right to elect that each Regular Record Date shall be each January 1, April 1, July 1 and October 1 immediately preceding the relevant Installment Payment Date by giving 10 days’ advance written notice to the Trustee and the Holders. Installment Payments shall be payable (x) in the case of any Certificated Note, at the office or agency of the Company maintained for that

* Include only if a Global Note.

† Include only if a Global Note.

‡ Include only if not a Global Note.

§ Include only if a Global Note.

purpose in the Borough of Manhattan, The City of New York; *provided, however,* that payment of Installment Payments may be made at the option of the Company by check mailed to the registered Holder at such address as shall appear in the Security Register or (y) in the case of any Global Note, by wire transfer in immediately available funds to the account of the Depository or its nominee or otherwise in accordance with applicable procedures of the Depository.

This Note shall not be entitled to any benefit under the Indenture hereinafter referred to or be valid or obligatory for any purpose until the Certificate of Authentication shall have been manually signed by or on behalf of the Trustee.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated:

[CORPORATE SEAL]

COLFAX CORPORATION

By: _____

Name:

Title:

By: _____

Name:

Title:

CERTIFICATE OF AUTHENTICATION

U.S. Bank National Association, as Trustee, certifies that this is one of the Securities of the series designated herein referred to in the within mentioned Indenture.

Dated:

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

COLFAX CORPORATION

6.50% Senior Amortizing Notes due 2022

This Note is one of a duly authorized series of Securities of the Company designated as its 6.50% Senior Amortizing Notes due 2022 (herein sometimes referred to as the “Notes”), issued under the Indenture, dated as of January 11, 2019, between the Company and U.S. Bank National Association, as trustee (the “Trustee,” which term includes any successor trustee under the Indenture) (including any provisions of the Trust Indenture Act that are deemed incorporated therein) (the “Base Indenture”), as supplemented by the First Supplemental Indenture, dated as of January 11, 2019 (the “Supplemental Indenture”), between the Company and the Trustee (the Base Indenture, as supplemented by the Supplemental Indenture, the “Indenture”), to which Indenture reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders. The terms of other series of Securities issued under the Base Indenture may vary with respect to interest rates, issue dates, maturity, redemption, repayment, currency of payment and otherwise as provided in the Base Indenture. The Base Indenture further provides that securities of a single series may be issued at various times, with different maturity dates and may bear interest at different rates. This series of Securities is limited in aggregate initial principal amount as specified in the Supplemental Indenture.

Each Installment Payment shall constitute a payment of interest (at a rate of 6.50% per annum) and a partial repayment of principal on the Notes, allocated with respect to each Note as set forth in the schedule below:

<u>Installment Payment Date</u>	<u>Amount of Principal</u>	<u>Amount of Interest</u>
April 15, 2019	\$1.2365	\$0.2649
July 15, 2019	\$1.2039	\$0.2336
October 15, 2019	\$1.2235	\$0.2140
January 15, 2020	\$1.2434	\$0.1941
April 15, 2020	\$1.2636	\$0.1739
July 15, 2020	\$1.2841	\$0.1534
October 15, 2020	\$1.3050	\$0.1325
January 15, 2021	\$1.3262	\$0.1113
April 15, 2021	\$1.3477	\$0.0898
July 15, 2021	\$1.3696	\$0.0679
October 15, 2021	\$1.3919	\$0.0456
January 15, 2022	\$1.4145	\$0.0230

The Notes shall not be subject to redemption at the option of the Company. However, a Holder shall have the right to require the Company to repurchase some or all of its Notes for cash at the Repurchase Price per Note and on the Repurchase Date, upon the occurrence of certain events and subject to the conditions set forth in the Indenture.

This Note is not entitled to the benefit of any sinking fund. The Indenture contains provisions for satisfaction and discharge, legal defeasance and covenant defeasance of this Note upon compliance by the Company with certain conditions set forth therein, which provisions apply to this Note.

If an Event of Default with respect to the Notes shall occur and be continuing, then (unless no declaration of acceleration or notice is required for such Event of Default) either the Trustee or the Holders of not less than 25% in principal amount of the Notes then outstanding may declare the aggregate principal amount of the Notes, and all interest accrued thereon, to be due and payable immediately, in the manner, subject to the conditions and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee, with the consent of the Holders of not less than a majority in principal amount of the Notes at the time outstanding, to execute supplemental indentures for certain purposes as described therein.

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 Repurchase Price, if applicable, of and all Installment Payments on this Note at the time, place and rate, and in the coin or currency, herein and in the Indenture prescribed.

The Notes are originally being issued as part of the 5.75% Tangible Equity Units (the “**Units**”) issued by the Company pursuant to that certain Purchase Contract Agreement, dated as of January 11, 2019, between the Company and U.S. Bank National Association, as Purchase Contract Agent, as Trustee and as attorney-in-fact for the holders of Purchase Contracts from time to time (the “**Purchase Contract Agreement**”). Holders of the Units have the right to separate such Units into their constituent parts, consisting of Separate Purchase Contracts (as defined in the Purchase Contract Agreement) and Separate Notes, during the times, and under the circumstances, described in the Purchase Contract Agreement. Following separation of any Unit into its constituent Separate Note and Separate Purchase Contract, the Separate Notes are transferable independently from the Separate Purchase Contracts. In addition, Separate Notes can be recombined with Separate Purchase Contracts to recreate Units, as provided for in the Purchase Contract Agreement. Reference is hereby made to the Purchase Contract Agreement for a more complete description of the terms thereof applicable to the Units.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note shall be registered on the Security Register of the Company, upon due presentation of this Note for registration of transfer at the office or agency of the Company in the Borough of Manhattan, The City of New York, duly endorsed by, or accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder hereof or by his attorney duly authorized in writing, and thereupon the Company shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Note or Notes in authorized denominations and for a like aggregate principal amount.

The Notes are initially issued in registered, global form without coupons in denominations equal to \$15.6099 initial principal amount and integral multiples in excess thereof.

The Company or Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer of this Note. No service charge shall be made for any such transfer or for any exchange of this Note as contemplated by the Indenture.

The Company, the Trustee and any agent of the Company or the Trustee may deem and treat the Person in whose name this Note is registered upon the Security Register for the Notes as the absolute owner of this Note (whether or not this Note shall be overdue and notwithstanding any notice of ownership or writing thereon made by anyone other than the Registrar) for the purpose of receiving payment of or on account of the principal of and, subject to the provisions of the Indenture, interest on this Note and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or the Trustee shall be affected by any notice to the contrary.

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

Capitalized terms used but not defined in this Note shall have the meanings ascribed to such terms in the Indenture.

No recourse shall be had for the payment of any Installment Payment on this Note, or for any claim based hereon, or upon any obligation, covenant or agreement of the Company in the Indenture, against any incorporator, stockholder, officer or director, past, present or future of the Company or of any predecessor or successor, either directly or through the Company or any predecessor or successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment of penalty or otherwise; and all such personal liability is expressly released and waived as a condition of, and as part of the consideration for, the issuance of this Note.

The Company and each Beneficial Holder agrees, for United States federal income tax purposes, to treat the Notes as indebtedness of the Company.

In the event of any inconsistency between the provisions of this Note and the provisions of the Indenture, the Indenture shall prevail.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Note to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

agent to transfer this Note on the books of the Company. The agent may substitute another to act for him or her.

Date:

Signature:

Signature Guarantee:

(Sign exactly as your name appears on the other side of this Note)

SIGNATURE GUARANTEE

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

By: _____
Name:
Title:

as Trustee

By: _____
Name:
Title:

Attest

By: _____
Name:
Title:

FORM OF REPURCHASE NOTICE

TO: COLFAX CORPORATION
U.S. BANK NATIONAL ASSOCIATION, as Trustee

The undersigned registered Holder hereby irrevocably acknowledges receipt of a notice from Colfax Corporation (the “**Company**”) regarding the right of Holders to elect to require the Company to repurchase the Notes and requests and instructs the Company to pay, for each Note designated below, the Repurchase Price for such Notes (determined as set forth in the Indenture), in accordance with the terms of the Indenture and the Notes, to the registered holder hereof. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. The Notes shall be repurchased by the Company as of the Repurchase Date pursuant to the terms and conditions specified in the Indenture.

Dated:

Signature:

NOTICE: The above signature of the Holder hereof must correspond with the name as written upon the face of the Notes in every particular without alteration or enlargement or any change whatever.

Notes Certificate Number (if applicable): _____

Number of Notes to be repurchased (if less than all, must be one Note or integral multiples in excess thereof): _____

Social Security or Other Taxpayer Identification Number: _____

SCHEDULE A

[SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE]⁶

The initial number of Notes evidenced by this Global Note is []. The following increases or decreases in this Global Note have been made:

<u>Date</u>	<u>Amount of decrease in number of Notes evidenced hereby</u>	<u>Amount of increase in number of Notes evidenced hereby</u>	<u>Number of Notes evidenced hereby following such decrease (or increase)</u>	<u>Signature of authorized officer of Trustee</u>
-------------	---	---	---	---

⁶ Include only if a Global Note.

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

200 Park Avenue
New York, NY 10166-0193
Tel 212.351.4000
www.gibsondunn.com

January 11, 2019

Colfax Corporation
420 National Business Parkway, 5th Floor
Annapolis Junction, MD 20701Re: Colfax Corporation
Registration Statement on Form S-3 (File No. 333-223067)

Dear Sirs:

We have acted as special counsel to Colfax Corporation, a Delaware corporation (the "Company") in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") of the Company's Registration Statement on Form S-3 (File No. 333-223067) (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), the prospectus included therein, the prospectus supplement, dated January 8, 2019, filed with the Commission on January 8, 2019 pursuant to Rule 424(b) of the Securities Act (the "Prospectus Supplement"), and the offering by the Company pursuant thereto of 4,600,000 5.75% Equity Units (the "Equity Units"), with each Equity Unit consisting of (i) a prepaid stock purchase contract issued by the Company (the "Purchase Contract") to purchase shares of the Company's common stock and (ii) a senior amortizing note due January 15, 2022 issued by the Company (the "Notes").

The Purchase Contracts are being issued pursuant to a Purchase Contract Agreement between the Company and U.S. Bank National Association, as purchase contract agent, custodial agent and securities intermediary (the "Purchase Contract Agreement").

The Notes are being issued pursuant to the Indenture dated as of January 11, 2019 (the "Base Indenture"), between the Company and U.S. Bank National Association, as trustee (the "Trustee"), as supplemented by a first supplemental indenture thereto, dated January 11, 2019, relating to the Notes (the "Supplemental Indenture" and together with the Base Indenture, the "Indenture") between the Company and the Trustee.

In arriving at the opinions expressed below, we have examined originals, or copies certified or otherwise identified to our satisfaction as being true and complete copies of the originals, of the Purchase Contract Agreement, the Base Indenture, the Supplemental Indenture, the Purchase Contracts, the form of Notes and such other documents, corporate records, certificates of officers of the Company and of public officials and other instruments as we have deemed necessary or advisable to enable us to render these opinions. In our examination, we have assumed, without independent investigation, the genuineness of all

January 11, 2019

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signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies. As to any facts material to these opinions, we have relied to the extent we deemed appropriate and without independent investigation upon statements and representations of officers and other representatives of the Company and others.

Based upon the foregoing, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that:

1. The Equity Units are legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its terms.
2. The Purchase Contracts are legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its terms.
3. The Notes are legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its terms.

The opinions expressed above are subject to the following additional exceptions, qualifications, limitations and assumptions:

A. We render no opinion herein as to matters involving the laws of any jurisdiction other than the State of New York and, to the extent relevant for opinions herein, the Delaware General Corporation Law. This opinion is limited to the effect of the current state of the laws of the State of New York and the Delaware General Corporation Law and the facts as they currently exist. We assume no obligation to revise or supplement this opinion in the event of future changes in such laws or the interpretations thereof or such facts.

B. The opinions above are subject to (i) the effect of any bankruptcy, insolvency, reorganization, moratorium, arrangement or similar laws affecting the rights and remedies of creditors' generally, including without limitation the effect of statutory or other laws regarding fraudulent transfers or preferential transfers, and (ii) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies regardless of whether enforceability is considered in a proceeding in equity or at law.

January 11, 2019

Page 3

C. We express no opinion regarding the effectiveness of (i) any waiver of stay, extension or usury laws or of unknown future rights, (ii) provisions relating to indemnification, exculpation or contribution, to the extent such provisions may be held unenforceable as contrary to public policy or federal or state securities laws, (iii) any purported fraudulent transfer “savings” clause, (iv) any provision waiving the right to object to venue in any court; (v) any agreement to submit to the jurisdiction of any Federal court; or (vi) any waiver of the right to jury trial.

We consent to the filing of this opinion as an exhibit to the Registration Statement, and we further consent to the use of our name under the caption “Legal Matters” in the Registration Statement and the Prospectus Supplement. In giving these consents, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Gibson, Dunn & Crutcher