UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): November 3, 2026

H2O America

(Exact name of registrant as specified in its charter)

Delaware	**001-8966**	**77-0066628**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

110 West Taylor Street, San Jose, CA	**95110**
(Address of principal executive offices)	**(Zip Code)**

(408) 279-7800
Registrant's telephone number, including area code

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common Stock, par value $0.001 per share	HTO	Nasdaq Global Select Market

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 ☐

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Item 1.01. Entry into a Material Definitive Agreement

The information set forth below under Item 8.01 of this Current Report on Form 8-K is incorporated herein by reference.

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

The information set forth below under Item 8.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 8.01. Other Events

On November 3, 2026, H2O America (the "Company") consummated the issuance and sale of the securities described below pursuant to an underwriting agreement, dated October 29, 2026 (the "Underwriting Agreement"), by and between the Company and Wells Fargo Securities, LLC and J.P. Morgan Securities LLC, as representatives of the several underwriters named therein (the "Underwriters"), pursuant to which the Company agreed to issue and sell to the Underwriters 7,475,000 equity units, initially in the form of corporate units (the "Corporate Units"). The Corporate Units include 975,000 of the Company's Corporate Units purchased pursuant to the full exercise of the Underwriters' over-allotment option. Each Corporate Unit has a stated amount of $50 and is comprised of (i) a purchase contract (each, a "stock purchase contract"), which will obligate the holder to purchase from the Company, no later than November 1, 2029, a certain number of shares of the Company's common stock, $0.001 par value (the "Common Stock"), for $50 in cash; and (ii) a 1/20 undivided beneficial ownership interest in $1,000 principal amount of the Company's 5.300% Remarketable Senior Notes due 2031 (the "RSNs"). Total annual distributions on the Corporate Units will be at the rate of 7.750% of the stated amount, consisting of quarterly contract adjustment payments under the stock purchase contracts in the amount of 2.450% per year and interest on the RSNs in the amount of 5.300% per year. The RSNs were issued pursuant to an Indenture, dated as of November 3, 2026 (the "Indenture"), by and between the Company and U.S. Bank Trust Company, National Association, as trustee (the "Trustee"), as supplemented by the First Supplemental Indenture, dated as of November 3, 2026, between the Company and the Trustee, establishing the terms of the RSNs. The stock purchase contracts were issued pursuant to a Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Purchase Contract and Pledge Agreement"), between the Company and U.S. Bank Trust Company, National Association, as purchase contract agent, collateral agent, custodial agent and securities intermediary. The RSNs, the stock purchase contracts and the Corporate Units are herein collectively referred to as the "Securities." Each of the Indenture and the Purchase Contract and Pledge Agreement includes covenants and conditions applicable to the Company and the Securities.

Under the terms of the Purchase Contract and Pledge Agreement, the RSNs are pledged as collateral to secure the obligations of the holders of the Corporate Units to purchase the shares of Common Stock under the stock purchase contracts that form a part of the Corporate Units. The RSNs will be remarketed, subject to certain terms and conditions, prior to the stock purchase contract settlement date pursuant to the terms of the Purchase Contract and Pledge Agreement and a remarketing agreement to be entered into among the Company, U.S. Bank Trust Company, National Association and a remarketing agent.

The descriptions of the Indenture, the Purchase Contract and Pledge Agreement and the Securities are qualified in their entirety by the provisions of the Indenture, which is filed as Exhibit 4.1 hereto, the First Supplemental Indenture, together with the form of RSN included therein, which is filed as Exhibit 4.2 hereto, the Purchase Contract and Pledge Agreement, which is filed as Exhibit 4.4 hereto, and the forms of Remarketing Agreement, Corporate Unit and Treasury Unit, each of which is included in Exhibit 4.4 hereto, and the Underwriting Agreement, which is filed as Exhibit 1.1 hereto. Such exhibits are incorporated herein by reference.

The Securities are being offered and sold pursuant to the Company's Registration Statement on Form S-3 (Registration No. 333-282881) (the "Registration Statement"). In connection with the issuance and sale of the Securities, the Company is filing the opinion of counsel regarding the validity of the Securities as Exhibit 5.1 and the opinion of counsel regarding certain tax matters as Exhibit 8.1 to this Current Report on Form 8-K for the purpose of incorporating such opinions into the Registration Statement.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description of Document
1.1	Underwriting Agreement, dated October 29, 2026, between the Company and Wells Fargo Securities, LLC and J.P. Morgan Securities LLC, as representatives of the several underwriters named therein.
4.1	Indenture, dated as of November 3, 2026, between the Company and U.S. Bank Trust Company, National Association, as Trustee.
4.2	First Supplemental Indenture, dated as of November 3, 2026, between the Company and U.S. Bank Trust Company, National Association, as Trustee.
4.3	Form of 5.300% Remarketable Senior Note due 2031 (included in Exhibit 4.2 above).
4.4	Purchase Contract and Pledge Agreement, dated as of November 3, 2026, between the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent, Collateral Agent, Custodial Agent and Securities Intermediary.
4.5	Form of Corporate Unit Certificate (included in Exhibit 4.4 above).
4.6	Form of Treasury Unit Certificate (included in Exhibit 4.4 above).
4.7	Form of Remarketing Agreement (included in Exhibit 4.4 above).
5.1	Opinion of Sullivan & Cromwell LLP as to the validity of the Securities.
8.1	Opinion of Sullivan & Cromwell LLP as to certain tax matters.
23.1	Consent of Sullivan & Cromwell LLP (included in Exhibit 5.1).
23.2	Consent of Sullivan & Cromwell LLP (included in Exhibit 8.1).
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within Inline XBRL document.

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 thereunto duly authorized.

H2O America

Date: November 3, 2026

/s/ Ann P. Kelly
Ann P. Kelly
Chief Financial Officer and Treasurer

EXHIBIT 1.1

H2O AMERICA

6,500,000 Equity Units

(Initially Consisting of 6,500,000 Corporate Units)

Underwriting Agreement

October 29, 2026

Wells Fargo Securities, LLC
J.P. Morgan Securities LLC

As Representatives of the
several Underwriters listed
in Schedule 1 hereto

c/o Wells Fargo Securities, LLC
500 West 33rd Street
New York, New York 10001

c/o J.P. Morgan Securities LLC
270 Park Avenue
New York, New York 10017

Ladies and Gentlemen:

H2O America, 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 6,500,000 equity units (the "Initial Equity Units") comprised of 6,500,000 corporate units (the "Initial Corporate Units") as set forth in Schedule 1 hereto. The Company also grants to the Underwriters an option to purchase up to an additional 975,000 equity units (the "Option Equity Units") comprised of up to 975,000 corporate units (the "Option Corporate Units") as described in Section 2(a) hereof, solely to cover over-allotments. The Initial Equity Units and the Option Equity Units are herein referred to collectively as the "Equity Units", and the Initial Corporate Units and the Option Corporate Units are herein referred to collectively as the "Corporate Units."

On October 1, 2026, (i) the Company, through its indirect subsidiary, SJWTX, Inc., a Texas corporation ("TWC"), acquired substantially all of the assets of Quadvest, L.P., a Texas limited partnership ("Quadvest Retail"), related to the operation of Quadvest Retail's water and sewer utility business and (ii) the Company, through its indirect subsidiary, Texas Water Operation Services, LLC, a Texas limited liability company ("TWOS"), acquired substantially all of the assets of Quadvest Wholesale, LLC, a Texas limited liability company ("Quadvest Wholesale" and together with Quadvest Retail, "Quadvest"), related to the operation of Quadvest Wholesale's wholesale water and sewer business (collectively, the "Quadvest Acquisition").

Each Corporate Unit has a stated amount of $50 (the "Stated Amount") and initially consists of (i) a stock purchase contract (a "Purchase Contract") issued by the Company pursuant to which the holder thereof will agree to purchase from the Company and the Company will agree to sell to the holder thereof on November 1, 2029, or if such day is not a business day, the following business day (the "Purchase Contract Settlement Date"), subject to earlier settlement or termination, for an amount of cash equal to the Stated Amount, shares of Common Stock, to be calculated pursuant to the Purchase Contract and Pledge Agreement (as hereinafter defined) and (ii) a $1/20^{th}$ undivided beneficial ownership interest in $1,000 principal amount of the Company's 5.300% Remarketable Senior Notes due 2031 (the "Notes").

The Notes will be issued pursuant to a Base Indenture, dated as of the Closing Date (as defined below) (the "Base Indenture"), by and between the Company and U.S. Bank Trust Company, National Association, as trustee (the "Trustee"), as amended and supplemented by a First Supplemental Indenture to be dated as of the Closing Date between the Company and the Trustee (the Base Indenture, as amended and supplemented, the "Indenture").

The Purchase Contracts will be issued pursuant to the Purchase Contract and Pledge Agreement, to be dated as of the Closing Date (the "Purchase Contract and Pledge Agreement"), among the Company and U.S. Bank Trust Company, National Association, as purchase contract agent (the "Purchase Contract Agent") and attorney-in-fact for the holders of the Corporate Units, U.S. Bank Trust Company, National Association, as collateral agent (the "Collateral Agent"), U.S. Bank Trust Company, National Association, as the custodial agent (the "Custodial Agent"), and U.S. Bank Trust Company, National Association, as the securities intermediary (the "Securities Intermediary"). The Notes will be pledged by the Purchase Contract Agent, on behalf of the holders of the Corporate Units, to the Collateral Agent to secure the holders' obligations to purchase the common stock of the Company, par value $0.001 per share (the "Common Stock") pursuant to the Purchase Contracts. The shares of Common Stock issuable pursuant to the Purchase Contracts are hereinafter called the "Shares."

The term "Operative Documents" means the Purchase Contract and Pledge Agreement (including the Purchase Contracts), the Notes, the Indenture and the Corporate Units.

The Company hereby confirms its agreement with the several Underwriters concerning the purchase and sale of the Equity Units, 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 (the "Securities Act"), and the rules and regulations of the Commission thereunder, a registration statement (File No. 333-282881) and post-effective amendment to such registration statement, including a prospectus, relating to the Equity Units. Such registration statement, as amended by the post-effective amendment to such registration statement and as further amended at the time it became (or is deemed to have become) 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 (or at such deemed time of effectiveness pursuant to Rule 430B) ("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 Equity Units. 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 (the "Exchange Act"), and the rules and regulations of the Commission thereunder 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, the "Pricing Disclosure Package"): a Preliminary Prospectus dated October 29, 2026 and each "free-writing prospectus" (as defined pursuant to Rule 405 under the Securities Act) listed on Annex A hereto.

"Applicable Time" means 9:35 P.M., New York City time, on October 29, 2026.

2. Purchase of the Corporate Units.

(a) The Company agrees to issue and sell the Initial Corporate Units 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 at a price per Corporate Unit of $48.50 (the "Purchase Price") from the Company the respective number of Initial Corporate Units set forth opposite such Underwriter's name in Schedule 1 hereto.

In addition, the Company agrees to issue and sell the Option Corporate Units 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 Corporate Units, solely to cover over-allotments, at the same purchase price per Option Corporate Unit as the Underwriters shall pay for the Initial Corporate Units.

If any Option Corporate Units are to be purchased, the number of Option Corporate Units to be purchased by each Underwriter shall be the number of Option Corporate Units which bears the same ratio to the aggregate number of Option Corporate Units being purchased as the number of Initial Corporate Units 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 Initial Corporate Units being purchased from the Company by the several Underwriters, subject, however, to such adjustments to eliminate any fractional Corporate Units as the Representatives in their sole discretion shall make.

The Underwriters may exercise the option to purchase Option Corporate Units at any time in whole, or from time to time in part, by written notice from the Representatives to the Company, solely to cover over-allotments and subject to the further requirements set forth in this paragraph. Such notice shall set forth the aggregate number of Option Corporate Units as to which the option is being exercised and the date and time when the Option Corporate Units are to be delivered and paid for, which date 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 the date that is the last day in the 13-calendar day period beginning on, and including, the Closing Date (unless such time and date are postponed in accordance with the provisions of Section 10 hereof). 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 Corporate Units, and initially to offer the Corporate Units on the terms set forth in the Pricing Disclosure Package. The Company acknowledges and agrees that the Underwriters may offer and sell Corporate Units to or through any affiliate of an Underwriter.

(c) Payment for the Corporate Units shall be made by wire transfer in immediately available funds to the account specified by the Company to the Representatives in the case of the Initial Corporate Units, at the offices of Simpson Thacher & Bartlett LLP at 10:00 A.M., New York City time, on November 3, 2026, 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 Corporate Units, 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 Corporate Units. The time and date of such payment for the Initial Corporate Units is referred to herein as the "Closing Date," and the time and date for such payment for the Option Corporate Units, if other than the Closing Date, is herein referred to as the "Additional Closing Date."

(d) Payment for the Corporate Units to be purchased on the Closing Date or the Additional Closing Date, as the case may be, shall be made against delivery of such Corporate Units in book-entry form through the facilities of The Depository Trust Company ("DTC") for the respective accounts of the several Underwriters, as designated by the Representatives in writing not later than two full business days prior to the Closing Date or the Additional Closing Date, as the case may be, with any transfer taxes payable in connection with the sale of such Corporate Units duly paid by the Company. Delivery of the Equity Units shall be made through the facilities of DTC unless the Representatives shall otherwise instruct.

(e) 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 Equity Units 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, financial or regulatory matters in any jurisdiction, and none of the activities of the Underwriters in connection with the transactions contemplated herein constitutes a recommendation, investment advice or solicitation of any action by the Underwriters with respect to any entity or natural person. The Company shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and neither the Representatives nor the other Underwriters 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 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 (it being understood and agreed that, in the case of Quadvest and its subsidiaries, all representations and warranties of the Company with respect to Quadvest and its subsidiaries are made to the knowledge of the Company) 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 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 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 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 consists of the information described as such in Section 7(b) hereof. No statement of material fact included in the Prospectus has been omitted from the Pricing Disclosure Package and no statement of material fact included in the Pricing Disclosure Package that is required to be included in the Prospectus has been omitted therefrom.

(c) *Issuer Free Writing Prospectus.* Other than the Registration Statement, the Preliminary Prospectus, the Prospectus and the Pricing Term Sheet, substantially in the form set forth in Annex B, 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 Equity Units (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 accompanying, or delivered prior to delivery 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 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 consists of the information described as such in Section 7(b) hereof. The Company agrees to prepare the Pricing Term Sheet in form and substance reasonably satisfactory to the Representatives and to file the Pricing Term Sheet pursuant to Rule 433(d) under the Securities Act within the time period prescribed by such rule.

(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 Equity Units 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 in reliance upon and in conformity with information furnished to the Company in writing by or on behalf of any Underwriter through the Representatives expressly for use in the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus and any amendment or supplement thereto, it being understood and agreed that the only such information 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 of the dates indicated and the results of their operations 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 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 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; 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 the 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 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 have been prepared in accordance with the applicable requirements of the Securities Act and the Exchange Act, as applicable, and the assumptions underlying such pro forma financial information are reasonable and are set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus; and

ii. The financial statements (including the related notes thereto) of Quadvest Retail and Quadvest Wholesale 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 Quadvest Retail and Quadvest Wholesale as of the dates indicated and the results of their respective operations and the changes in their respective 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 supporting schedules included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus 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 has been derived from the accounting records of Quadvest Retail and Quadvest Wholesale and presents fairly, in all material respects, the information shown thereby;

(g) *No Material Adverse Change.* 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 and except as disclosed in the Pricing Disclosure Package and the Prospectus, (i) there has not been any material change in the capital stock of the Company or any of its subsidiaries, taken as a whole (other than (A) the issuance of shares of Common Stock under the 2023 Employee Stock Purchase Plan, (B) the issuance and withholding of shares of Common Stock in connection with restricted stock units or deferred restricted stock units described as outstanding in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (C) the grant of purchase rights under the 2023 Employee Stock Purchase Plan and awards under existing equity plans of the Company, including the Company's Long-Term Incentive Plan, which plans are described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (D) the issuance of Corporate Units pursuant to this Agreement or the issuance of Shares pursuant to any agreement in connection with the Forward Sale Agreements (as defined below), and (E) in connection with the Quadvest Acquisition), material change in short-term debt or long-term debt of the Company or any of its subsidiaries taken as a whole (other than borrowings and the repayment of borrowings in the ordinary course of business) or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock (other than regularly scheduled cash dividends in amounts that are consistent with past practice), or any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, properties, management, financial position, stockholders' equity, results of operations or prospects of the Company and its subsidiaries, taken as a whole; (ii) neither the Company nor any of its subsidiaries has entered into any transaction or agreement (whether or not in the ordinary course of business) that is material to the Company and its subsidiaries taken as a whole (other than the Quadvest Acquisition), or incurred any liability or obligation, direct or contingent, that is material to the Company and its subsidiaries, taken as a whole (other than in connection with the Quadvest Acquisition); and (iii) neither the Company nor any of its subsidiaries has sustained any loss or interference with its business that is material to the Company and its 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.

(h) *Organization and Good Standing.* The Company and each of its subsidiaries have been duly organized and are validly existing and in good standing under the laws of their respective jurisdictions of organization, are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a material adverse effect on the business, properties, management, financial position, stockholders' equity, results of operations or prospects of the Company and its subsidiaries taken as a whole or on the performance by the Company of its obligations under this Agreement or the Operative Documents (a "Material Adverse Effect"). The Company does not own or control, directly or indirectly, any corporation, association or other entity required to be listed in an exhibit to an Annual Report on Form 10-K pursuant to Item 601(b)(21) of Regulation S-K of the Securities Act other than the subsidiaries listed in Exhibit 21.1 of the Annual Report on Form 10-K of the Company for the year ended December 31, 2025 incorporated by reference into the Registration Statement.

(i) *Capitalization.* The Company has an authorized capitalization as of September 30, 2026 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 pursuant to the Forward Sale Agreements and the Company's Long-Term Incentive Plan, as amended (which provides for the Amended and Restated Deferred Restricted Stock Program and Formulaic Equity Award Program for Non-Employee Board Members) and 2023 Employee Stock Purchase Plan or as otherwise 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; and all the outstanding shares of capital stock or other equity interests of each subsidiary of the Company owned, directly or indirectly, by the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party.

(j) *Stock Options.* The Company currently does not have any issued and outstanding stock options granted pursuant to the stock-based compensation plans of the Company and its subsidiaries. The Company has not knowingly granted, and there is no and has been no policy or practice of the Company of granting, stock options prior to, or otherwise coordinating the grant of stock options with, the release or other public announcement of material information regarding the Company or its subsidiaries or their results of operations or prospects.

(k) *Due Authorization.* The Company has full right, power and authority to execute and deliver this Agreement and the Operative Documents and to perform its obligations under this Agreement and the Operative Documents; and all action required to be taken for the due and proper authorization, execution and delivery by it of this Agreement and the Operative Documents and the consummation by it of the transactions contemplated thereby has been duly and validly taken.

(l) *Underwriting Agreement.* This Agreement has been duly authorized, executed and delivered by the Company.

(m) *Indenture*. The Indenture has been duly authorized by the Company and, on the Closing Date and on the Additional Closing Date, as applicable, will have been duly executed and delivered by the Company, and, assuming due authorization, execution and delivery of the Indenture by the Trustee, the Indenture will, on the Closing Date and on the Additional Closing Date, as applicable, constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by (1) bankruptcy, insolvency, reorganization, receivership, liquidation, fraudulent conveyance, moratorium or other similar laws affecting creditors' rights generally or (2) general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity) (the "Enforceability Exceptions"); the Indenture will conform in all material respects to all statements relating thereto contained in the Pricing Disclosure Package and the Prospectus; and, on the Closing Date and on the Additional Closing Date, the Indenture will have been duly qualified under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act").

(n) *The Notes*. The Notes to be issued and delivered by the Company have been duly authorized by the Company and, when issued and authenticated pursuant to the Indenture and delivered and paid for as part of the Corporate Units as provided herein, will constitute valid and legally binding obligations of the Company in accordance with their terms, except to the extent that enforcement thereof may be limited by the Enforceability Exceptions, will be in the form contemplated by, and entitled to the benefits of, the Indenture and will conform in all material respects to all statements relating thereto in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(o) *The Equity Units.* The Equity Units 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 Corporate Units as provided herein, will be duly and validly issued, will be fully paid and nonassessable and will conform to the description thereof in the Registration Statement, the Pricing Disclosure Package and the Prospectus; and the issuance of the Equity Units is not subject to any preemptive or similar rights.

(p) *Purchase Contract and Pledge Agreement*. The Purchase Contract and Pledge Agreement has been duly authorized by the Company and, on the Closing Date and on the Additional Closing Date, as applicable, will have been duly executed and delivered by the Company, and, assuming due authorization, execution and delivery of the Purchase Contract and Pledge Agreement by the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary, the Purchase Contract and Pledge Agreement will, on the Closing Date and on the Additional Closing Date, as applicable, constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by the Enforceability Exceptions.

(q) *The Shares.* The Shares to be issued and sold by the Company pursuant to the Purchase Contract and Pledge Agreement have been duly authorized by the Company and, when issued and delivered and paid for as provided under the Purchase Contract and Pledge Agreement, will be duly and validly issued, will be fully paid and nonassessable and will conform to the description thereof in the Registration Statement, the Pricing Disclosure Package and the Prospectus; and the issuance of the Shares is not subject to any preemptive or similar rights.

(r) [Reserved.]

(s) *Descriptions of the Underwriting Agreement.* This Agreement conforms in all material respects to the description thereof contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(t) *No Violation or Default.* Neither the Company nor any of its subsidiaries is (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any property or asset of the Company or any of its subsidiaries is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(u) *No Conflicts.* The execution, delivery and performance by the Company of this Agreement and the Operative Documents and the issuance and sale of the Equity Units will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, result in the termination, modification or acceleration of, or result in the creation or imposition of any lien, charge or encumbrance upon any property, right or asset of the Company or any of its subsidiaries pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any property, right or asset of the Company or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the charter or by-laws or similar organizational documents of the Company or (iii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority having jurisdiction over the Company or any of its subsidiaries, except, in the case of clauses (i) and (iii) above, for any such conflict, breach, violation, default, lien, charge or encumbrance that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(v) *No Consents Required.* No consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Company of this Agreement and the issuance and sale of the Equity Units, except for the registration of the Equity Units under the Securities Act and such consents, approvals, authorizations, orders and registrations or qualifications (i) as have already been obtained or will have been obtained prior to the Closing Date, (ii) 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 Corporate Units by the Underwriters, and (iii) the qualification of the Indenture under the Trust Indenture Act.

(w) *Legal Proceedings.* Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no legal, governmental or regulatory investigations, actions, demands, claims, suits, arbitrations, inquiries or proceedings ("Actions") pending to which the Company or any of its subsidiaries is or may be a party or to which any property of the Company or any of its subsidiaries is or may be the subject as to which there is a reasonable possibility of an adverse determination and that, individually or in the aggregate, if determined adversely to the Company or any of its subsidiaries, would reasonably be expected to have a Material Adverse Effect; to the knowledge of the Company, no such Actions are threatened or contemplated by any governmental or regulatory authority or threatened by others; and (i) there are no current or pending Actions that are required under the Securities Act to be described in the Registration Statement, the Pricing Disclosure Package or the Prospectus that are not so described in the Registration Statement, the Pricing Disclosure Package and the Prospectus and (ii) there are no contracts or other documents that are required under the Securities Act to be filed as exhibits to the Registration Statement or described in the Registration Statement, the Pricing Disclosure Package or the Prospectus that are not so filed as exhibits to the Registration Statement or described in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(x) *Independent Accountants*. (i) Deloitte & Touche LLP, who have certified certain financial statements of the Company and its subsidiaries, 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 and (ii) Calvetti Ferguson, who have certified certain financial statements of Quadvest Retail and Quadvest Wholesale, is an independent registered public accounting firm with respect to Quadvest Retail and Quadvest Wholesale within the applicable rules and regulations adopted by the Commission and the American Institute of Certified Public Accountants and as required by the Securities Act.

(y) *Title to Real and Personal Property*. The Company and its subsidiaries have good and marketable title in fee simple (in the case of real property) to, or have valid rights to lease or otherwise use, all items of real and personal property that are material to the business of the Company and its subsidiaries, in each case free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and its subsidiaries, or (ii) would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(z) *Intellectual Property.* (i) The Company and its subsidiaries own or have the right to use all patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, domain names and other source indicators, copyrights and copyrightable works, know-how, trade secrets, systems, procedures, proprietary or confidential information and all other worldwide intellectual property, industrial property and proprietary rights (collectively, "Intellectual Property") used in or held for use in the conduct of their respective businesses, except where the failure to own or have such rights would not, individually or in the aggregate, result in a Material Adverse Effect; (ii) the Company's and its subsidiaries' conduct of their business does not infringe, misappropriate or otherwise violate any Intellectual Property of any person, except where such infringement would not, individually or in the aggregate, result in a Material Adverse Effect; (iii) the Company and its subsidiaries have not received any written notice of any claim relating to Intellectual Property; and (iv) to the knowledge of the Company, the Intellectual Property of the Company and its subsidiaries is not being infringed, misappropriated or otherwise violated by any person.

(aa) *No Undisclosed Relationships*. No relationship, direct or indirect, exists between or among the Company or any of its subsidiaries, on the one hand, and the directors, officers, stockholders, customers, suppliers or other affiliates of the Company or any of its subsidiaries, on the other, that is required by the Securities Act to be described in each of the Registration Statement and the Prospectus and that is not so described in such documents and in the Pricing Disclosure Package.

(bb) *Investment Company Act*. The Company is not and, after giving effect to the offering and sale of the Equity Units and the application of the net 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" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Investment Company Act").

(cc) *Taxes.* The Company and its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date of this Agreement or have requested extensions thereof and have paid all taxes due, except (i) (with respect to payments) as currently being contested in good faith and for which reserves required by GAAP have been created in the financial statements of the Company or (ii) where the failure to so file or pay would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect; and other than tax deficiencies which the Company or any of its subsidiaries is contesting in good faith and for which the Company or any of its subsidiaries has provided adequate reserves, or as otherwise disclosed in each of the Registration Statement, the Pricing Disclosure Package and the Prospectus, there is no tax deficiency that has been asserted in writing against the Company or any of its subsidiaries or any of their respective properties or assets that would reasonably be expected to have a Material Adverse Effect.

(dd) *Licenses and Permits.* The Company and its subsidiaries possess all licenses, sub-licenses, certificates, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as described in each of the Registration Statement, the Pricing Disclosure Package and the Prospectus, except where the failure to possess or make the same would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect; and except as described in each of the Registration Statement, the Pricing Disclosure Package and the Prospectus, neither the Company nor any of its subsidiaries has received notice of any revocation or modification of any such license, sub-license, certificate, permit or authorization or has any reason to believe that any such license, sub-license, certificate, permit or authorization will not be renewed in the ordinary course, which revocation, modification or non-renewal would be reasonably expected to have a Material Adverse Effect.

(ee) *No Labor Disputes.* No labor disturbance by or dispute with employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is contemplated or threatened, and the Company is not aware of any existing or imminent labor disturbance by, or dispute with, the employees of any of its or its subsidiaries' principal suppliers or contractors, except as would not have a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received any notice of cancellation or termination with respect to any collective bargaining agreement to which it is a party.

(ff) *Certain Environmental Matters*. (i) The Company and its subsidiaries (x) are in compliance with all, and have not violated any, applicable federal, state, local and foreign laws (including common law), rules, regulations, requirements, decisions, judgments, decrees, orders and other legally enforceable requirements relating to pollution, hazardous or toxic substances or wastes, pollutants or contaminants, or the protection of the environment, natural resources or human health or safety (collectively, "Environmental Laws"); (y) have received and are in compliance with all, and have not violated any, permits, licenses, certificates or other authorizations or approvals required of them under any Environmental Laws to conduct their respective businesses; and (z) have not received notice of any actual or potential liability or obligation under or relating to, or any actual or potential violation of, any Environmental Laws, including for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, and have no knowledge of any event or condition that would reasonably be expected to result in any such notice, and (ii) there are no costs or liabilities associated with Environmental Laws of or relating to the Company or its subsidiaries, except in the case of each of (i) and (ii) above, for any such matter as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (iii) except as described in each of the Pricing Disclosure Package and the Prospectus, (x) there is no proceeding that is pending, or that is known to be contemplated, against the Company or any of its subsidiaries under any Environmental Laws in which a governmental entity is also a party, other than such proceeding regarding which it is reasonably believed no monetary sanctions of $300,000 or more will be imposed, (y) the Company and its subsidiaries are not aware of any facts or issues regarding compliance with Environmental Laws, or liabilities or other obligations under Environmental Laws or concerning hazardous or toxic substances or wastes, pollutants or contaminants that could reasonably be expected to have a material effect on the capital expenditures, earnings or competitive position of the Company and its subsidiaries, and (z) none of the Company or its subsidiaries anticipates material capital expenditures relating to any Environmental Laws.

(gg) *Compliance with ERISA*. (i) Each employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), for which the Company or any member of its "Controlled Group" (defined as any entity, whether or not incorporated, that is under common control with the Company within the meaning of Section 4001(a)(14) of ERISA or any entity that would be regarded as a single employer with the Company under Section 414(b),(c),(m) or (o) of the Internal Revenue Code of 1986, as amended (the "Code")) would have any liability (each, a "Plan") has been maintained in compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan, excluding transactions effected pursuant to a statutory or administrative exemption; (iii) for each Plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no Plan has failed (whether or not waived), or is reasonably expected to fail, to satisfy the minimum funding standards (within the meaning of Section 302 of ERISA or Section 412 of the Code) applicable to such Plan; (iv) no Plan is, or is reasonably expected to be, in "at risk status" (within the meaning of Section 303(i) of ERISA) and no Plan that is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA is in "endangered status" or "critical status" (within the meaning of Sections 304 and 305 of ERISA); (v) the fair market value of the assets of each Plan exceeds the present value of all benefits accrued under such Plan (determined based on those assumptions used to fund such Plan); (vi) no "reportable event" (within the meaning of Section 4043(c) of ERISA and the regulations promulgated thereunder) has occurred; (vii) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified, and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification; (viii) neither the Company nor any member of the Controlled Group has incurred, nor reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation, in the ordinary course and without default) in respect of a Plan (including a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA); and (ix) none of the following events has occurred or is reasonably likely to occur: (A) a material increase in the aggregate amount of contributions required to be made to all Plans by the Company or its Controlled Group affiliates in the current fiscal year of the Company and its Controlled Group affiliates compared to the amount of such contributions made in the Company's and its Controlled Group affiliates' most recently completed fiscal year; or (B) a material increase in the Company and its subsidiaries' "accumulated post-retirement benefit obligations" (within the meaning of Accounting Standards Codification Topic 715-60) compared to the amount of such obligations in the Company and its subsidiaries' most recently completed fiscal year, except in each case with respect to the events or conditions set forth in (i) through (ix) hereof, as would not, individually or in the aggregate, have a Material Adverse Effect.

(hh) *Disclosure Controls*. The Company and its subsidiaries maintain an effective system of "disclosure controls and procedures" (as defined in Rule 13a-15(e) of the Exchange Act) that complies with the requirements of the Exchange Act and that has been designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure. The Company and its subsidiaries have carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act.

(ii) *Accounting Controls.* The Company and its subsidiaries maintain systems of "internal control over financial reporting" (as defined in Rule 13a-15(f) of the Exchange Act) that comply with the requirements of the Exchange Act and have been designed by, or under the supervision of, their respective principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP; provided, that no such representation is made with respect to the financial reporting of Quadvest Retail or Quadvest Wholesale, which are expected to be excluded from management's assessment and conclusion on the effectiveness of the Company's internal controls over financial reporting as of December 31, 2026. Other than with respect to the assets and operations of Quadvest Retail and Quadvest Wholesale, the Company and its subsidiaries maintain 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, except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no material weaknesses in the Company's internal controls. 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.

(jj) *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.

(kk) *Insurance.* The Company and its subsidiaries have insurance covering their respective properties, operations, personnel and businesses, including business interruption insurance, which insurance is in amounts and insures against such losses and risks as are adequate to protect their respective businesses; and neither the Company nor any of its subsidiaries has (i) received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance or (ii) any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business.

(ll) *Cybersecurity; Data Protection.* 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 Company's knowledge, 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, to the Company's knowledge, 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, 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. To the Company's knowledge, the Company and its subsidiaries have taken all necessary actions, to the extent required to have been taken as of the date hereof, to prepare to comply with all other applicable laws and regulations with respect to Personal Data that have been announced as of the date hereof as becoming effective within 12 months after the date hereof, and for which any non-compliance with same would be reasonably likely to create a material liability.

(mm) *No Unlawful Payments.* Neither the Company nor any of its subsidiaries, nor any director or officer of the Company or any of its subsidiaries 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 has (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; 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 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 all applicable anti-bribery and anti-corruption laws.

(nn) *Compliance with Anti-Money Laundering Laws*. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering statutes of all jurisdictions where the Company or any of its subsidiaries conducts business, the 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 knowledge of the Company, threatened.

(oo) *No Conflicts with Sanctions Laws.* Neither the Company nor any of its subsidiaries, 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 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"), the European Union, the United Kingdom or other relevant sanctions authority (collectively, "Sanctions"), nor is the Company or any of its subsidiaries located, organized or resident in a country or territory that is the target of Sanctions, including, without limitation, Crimea and the non-government controlled areas of the Zaporizhzhia and Kherson Regions of Ukraine, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, Cuba, Iran and North Korea (each, a "Sanctioned Country"); and the Company will not directly or indirectly use the proceeds of the offering of the Equity Units 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 Country or (iii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as agent, underwriter, advisor, investor or otherwise) of Sanctions. For the past five years, the Company and its subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

(pp) *No Restrictions on Subsidiaries*. Except as disclosed in the Registration Statement, Pricing Disclosure Package and the Prospectus or otherwise would not have a Material Adverse Effect, no subsidiary of the Company is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject (other than the Company's and its subsidiaries' existing debt agreements), from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock or similar ownership interest, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's properties 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 Equity Units.

(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 offering, issuance and sale of the Equity Units.

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

(tt) *Forward-Looking Statements.* No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) included or incorporated by reference in any of the Registration Statement, the Pricing Disclosure Package or the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(uu) *Statistical and Market Data.* Nothing has come to the attention of the Company that has caused the Company to believe that the statistical and market-related data included or incorporated by reference in each of the Registration Statement, the Pricing Disclosure Package and the Prospectus is not based on or derived from sources that are reliable and accurate in all material respects.

(vv) *Sarbanes-Oxley Act*. There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply in any material respect with any provision of the Sarbanes-Oxley Act of 2002, as amended and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act"), including Section 402 related to loans and Sections 302 and 906 related to certifications.

(ww) *Status under the Securities Act*. At the time of filing the Registration Statement and the most recent 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 Equity Units 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.

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 Equity Units; 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 5:00 P.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.* Upon request, the Company will deliver, without charge, (i) to the Representatives, two copies of the Registration Statement as originally filed and each amendment thereto, in each case including all exhibits and consents filed therewith; and (ii) to each Underwriter (A) a conformed 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 each Issuer Free Writing Prospectus) as the Representatives may reasonably request, in each case, other than a document incorporated by reference in the Registration Statement (except for any Current Reports on Form 8-K filed in connection with the offering of the Equity Units). As used herein, the term "Prospectus Delivery Period" means such period of time after the first date of the public offering of the Equity Units as in the opinion of counsel for the Underwriters a prospectus relating to the Equity Units 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 Equity Units 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, in each case during the Prospectus Delivery Period, 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 object.

(d) *Notice to the Representatives.* The Company will advise the Representatives promptly, and confirm such advice in writing, during the Prospectus Delivery Period, (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 or any other governmental or regulatory authority 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 or development 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 Equity Units for offer and sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and the Company will use its reasonable best 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 Equity Units 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 promptly notify the Representatives thereof and forthwith prepare and, subject to paragraph (c) above, file with the Commission and furnish to the Representatives 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 promptly notify the Representatives thereof and forthwith prepare and, subject to paragraph (c) above, file with the Commission (to the extent required) and furnish to the Representatives 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 Equity Units 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 Equity Units; 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 30 days after the date of the Prospectus, the Company will not (i) offer, pledge, lend, 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 file with, or submit to, 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 Wells Fargo Securities, LLC, other than (A) the Equity Units to be sold hereunder or any shares of Common Stock issued upon settlement of any Purchase Contract, (B) the issuance of shares of Common Stock under the Amended and Restated Deferred Restricted Stock Program, (C) the issuance of shares of Common Stock under the 2023 Employee Stock Purchase Plan, (D) the issuance and withholding of shares of Common Stock in connection with restricted stock units or deferred restricted stock units outstanding on the date hereof, (E) the grant of purchase rights under the 2023 Employee Stock Purchase Plan and awards under equity plans of the Company, including the Company's Long-Term Incentive Plan, which plans are described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (F) the issuance and sale of the shares of Common Stock (if any) to be issued to the Forward Purchasers (as defined below) pursuant to the letter agreements (the "Forward Sale Agreements") each dated March 2, 2026 between the Company and each of JPMorgan Chase Bank, National Association, New York Branch and Wells Fargo Bank, National Association, each in its capacity as a forward purchaser (in such capacity, a "Forward Purchaser" and, collectively, the "Forward Purchasers"), whether pursuant to Physical Settlement, Net Share Settlement or the provisions of "Acceleration Events" (as such terms are defined in the Forward Sale Agreements) or otherwise and (G) the issuance of, or entry into an agreement to issue, up to 10% of the outstanding shares of Common Stock or any Related Securities (as defined below) in connection with one or more mergers, acquisitions of securities, businesses, property or other assets or products, joint ventures, commercial relationships or other strategic corporate transactions or alliances; provided that, in the case of this clause (h)(G), the transferee of such Common Stock or any Related Securities agrees to be bound in writing to the restrictions set forth in this Section 4(h). For purposes of the foregoing, "Related Securities" shall mean any options or warrants or other rights to acquire Common Stock or any securities exchangeable or exercisable for or convertible into Common Stock, or to acquire other securities or rights ultimately exchangeable or exercisable for, or convertible into, Common Stock.

(i) *Use of Proceeds.* The Company will apply the net proceeds from the sale of the Equity Units 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 or affiliates 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 Common Stock.

(k) *Exchange Listing.* The Company will use its reasonable best efforts to list, subject to notice of issuance, the Corporate Units on the Nasdaq Global Select Market (the "Exchange").

(l) *Reports.* So long as the Equity Units are outstanding, the Company will furnish to the Representatives, as soon as they are available, copies of all reports or other communications (financial or other) furnished to holders of the Equity Units, 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.

(m) *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.

(n) *Shelf Renewal*. If immediately prior to the third anniversary (the "Renewal Deadline") of the initial effective date of the Registration Statement, any of the Equity Units remain unsold by the Underwriters, the Company will, prior to the Renewal Deadline, file, if it has not already done so and is eligible to do so, a new automatic shelf registration statement relating to the Equity Units, in a form reasonably satisfactory to the Representatives. If the Company is not eligible to file an automatic shelf registration statement, the Company will, prior to the Renewal Deadline, if it has not already done so, file a new shelf registration statement relating to the Equity Units, in a form reasonably satisfactory to the Representatives, and will use its best efforts to cause such registration statement to be declared effective within 180 days after the Renewal Deadline. The Company will take all other action necessary or appropriate to permit the issuance and sale of the Equity Units to continue as contemplated in the expired registration statement relating to the Equity Units. References herein to the Registration Statement shall include such new automatic shelf registration statement or such new shelf registration statement, as the case may be.

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

(a) It has not 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 Corporate Units unless such terms have previously been included in a free writing prospectus filed with the Commission.

(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 Initial Corporate Units on the Closing Date or the Option Corporate Units 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, including the Pricing Term Sheet, 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 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 Downgrade*. Subsequent to the earlier of (A) the Applicable Time and (B) the execution and delivery of this Agreement, (i) no downgrading shall have occurred in the rating accorded any debt securities, convertible securities or preferred stock issued, or guaranteed by, the Company or any of its subsidiaries by any "nationally recognized statistical rating organization," as such term is defined under Section 3(a)(62) under the Exchange Act and (ii) no such organization shall have publicly announced that it has under surveillance or review, or has changed its outlook with respect to, its rating of any such debt securities or preferred stock issued or guaranteed by the Company or any of its subsidiaries (other than an announcement with positive implications of a possible upgrading).

(d) *No Material Adverse Change.* No event or condition of a type described in Section 3(g) hereof shall have occurred or shall exist, which event or condition is not described in the Pricing Disclosure Package (excluding any amendment or supplement thereto) and the Prospectus (excluding any amendment or supplement thereto) and the effect of which in the judgment of the Representatives makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Corporate Units 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 Pricing Disclosure Package and the Prospectus.

(e) *Officers' Certificate.* The Representatives shall have received on and as of the Closing Date or the Additional Closing Date, as the case may be, a certificate of the chief financial officer or chief accounting officer of the Company and one additional senior executive officer of the Company who is reasonably satisfactory to the Representatives (i) confirming that such officers have carefully reviewed the Registration Statement, the Pricing Disclosure Package and the Prospectus and to the knowledge of such officers, the representations set forth in Sections 3(b) and 3(d) hereof are true and correct, (ii) confirming that the other representations and warranties of the Company in this Agreement are true and correct; provided that the representations and warranties of the Company related to Quadvest are true and correct to the knowledge of the officers, and that the Company has complied with all agreements and satisfied all conditions on its 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) to the effect set forth in paragraphs (a), (c) and (d) above.

(f) *Comfort Letters.* On the date of this Agreement and on the Closing Date or the Additional Closing Date, as the case may be, each of Deloitte & Touche LLP and Calvetti Ferguson shall have furnished to the Representatives, at the request of the Company, 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.

(g) *Opinion and 10b-5 Statement of Counsel for the Company.* Sullivan & Cromwell LLP, counsel for the Company, shall have furnished to the Representatives, at the request of the Company, their written opinion and disclosure letter, 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 of Regulatory Counsel for the Company.* Each of (1) Day Pitney LLP, Connecticut regulatory counsel for the Company, (2) Nossaman LLP, California regulatory counsel for the Company, and (3) Spencer Fane LLP, Texas regulatory counsel for the Company, shall have furnished to the Representatives, at the request of the Company, their written opinions, 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 Representative.

(i) *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 Simpson Thacher & Bartlett 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.

(j) *No Legal Impediment to Issuance and 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 Corporate Units; 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 Corporate Units.

(k) *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 in the State of Delaware, in each case in writing or any standard form of telecommunication from the appropriate governmental authorities of such jurisdictions.

(l) *Exchange Listing.* A listing application shall have been submitted to the Exchange, and the Exchange shall not have objected to the listing of the Corporate Units to be delivered on the Closing Date or the Additional Closing Date, as the case may be.

(m) *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 listed on Schedule 2 hereto relating to sales and certain other dispositions of shares of Common 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.

(n) *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 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 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 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 consists of the following information in the Prospectus furnished on behalf of each Underwriter: the concession figure appearing in the third paragraph under the caption "Underwriting" and the information contained in the first and second paragraphs under the subheading "Underwriter activities" under the caption "Underwriting."

(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 Wells Fargo 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) or (b) 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 Equity Units 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 Equity Units 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 Equity Units. 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 paragraph (d) and this paragraph (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 Equity Units 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 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 Corporate Units, 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 Corporate Units 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 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 Corporate Units that it has agreed to purchase hereunder on such date, the non-defaulting Underwriters may in their discretion arrange for the purchase of such Corporate Units by other persons satisfactory to the Company on the terms contained in this Agreement. If, within 36 hours after any such default by any Underwriter, the non-defaulting Underwriters do not arrange for the purchase of such Corporate Units, then the Company shall be entitled to a further period of 36 hours within which to procure other persons satisfactory to the non-defaulting Underwriters to purchase such Corporate Units on such terms. If other persons become obligated or agree to purchase the Corporate Units 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 Corporate Units that a defaulting Underwriter agreed but failed to purchase.

(b) If, after giving effect to any arrangements for the purchase of the Corporate Units of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the aggregate number of Corporate Units 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 Corporate Units to be purchased on such date, then the Company shall have the right to require each non-defaulting Underwriter to purchase the number of Corporate Units that such Underwriter agreed to purchase hereunder on such date plus such Underwriter's pro rata share (based on the number of Corporate Units that such Underwriter agreed to purchase on such date) of the Corporate Units 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 Corporate Units of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the aggregate number of Corporate Units 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 Corporate Units 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 Corporate Units 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 Equity Units 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 preparation, issuance and delivery of the certificate(s) for the Equity Units, (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 Equity Units under the laws of such jurisdictions as the Representatives may designate and the preparation, printing and distribution of a Blue Sky Memorandum (including the 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 and any registrar; (viii) the fees and expenses of the Trustee, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary in connection with the Indenture, the Purchase Contract and Pledge Agreement and the Corporate Units, including fees and disbursements of counsel for the Trustee in connection with the Indenture; (ix) all expenses and application fees incurred in connection with any filing with, and clearance of the offering by, FINRA (including the related fees and expenses of counsel for the Underwriters, it being understood that the fees and expenses of counsel for the Underwriters payable pursuant to clause (v) and this clause (ix) shall not exceed $25,000 in the aggregate); (x) all expenses incurred by the Company in connection with any "road show" presentation to potential investors; (xi) all expenses and application fees related to the listing of the Corporate Units on the Exchange; and (xii) all expenses and application fees related to having the Equity Units be eligible for delivery and settlement through the facilities of DTC.

(b) If (i) this Agreement is terminated pursuant to Section 9(i), Section 9(iii), Section 9(iv) or Section 10, the Underwriters will pay their own out-of-pocket costs and expenses and (ii) (A) this Agreement is terminated pursuant to Section 9(ii) or (B) the Underwriters decline to purchase the Corporate Units for any reason permitted under this Agreement (other than pursuant to Section 9(i), Section 9(iii), Section 9(iv) or Section 10), the Company agrees to reimburse the Underwriters for all out-of-pocket costs and expenses (including the 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 Equity Units 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 Corporate Units 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. Notice to the Company shall be given at H2O America, 110 West Taylor Street, San Jose, California 95110 (email: [*Intentionally Omitted*]), Attention: Willie Brown, Vice President and General Counsel. Notices to the Underwriters shall be given to the Representatives c/o Wells Fargo Securities, LLC, 500 West 33rd Street, 14th Floor, New York, New York 10001, Attention: Equity Syndicate Department (fax no: (212) 214-5918) and c/o J.P. Morgan Securities LLC, 270 Park Avenue, New York, New York 10017 (fax: (212) 622-8358), Attention: Equity Syndicate Desk.

(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. 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 the 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) *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.

As used in this Section 16(e):

"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.

(f) *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. The words "execution," "signed," "signature," "delivery" and words of like import in or relating to this Agreement or any document to be signed in connection with this Agreement shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the Electronic Signatures in Global and National Commerce Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law (e.g., www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be legally valid, effective and enforceable for all purposes.

(g) *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.

(h) *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.

[*Remainder of page intentionally left blank*]

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

Very truly yours,

H2O AMERICA

By: /s/ Ann P. Kelly
Name: Ann P. Kelly
Title: Chief Financial Officer and Treasurer

[Signature Page to Underwriting Agreement]

Accepted: As of the date first written above

WELLS FARGO SECURITIES, LLC
J.P. MORGAN SECURITIES LLC

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

WELLS FARGO SECURITIES, LLC

By: /s/ Craig McCracken
Authorized Signatory

[*Signature Page to Underwriting Agreement*]

J.P. MORGAN SECURITIES LLC

By: /s/ Gaurav Maria
Name: Gaurav Maria
Title: Managing Director

Schedule 1

Underwriter	Number of Initial Corporate Units
Wells Fargo Securities, LLC	2,275,000
J.P. Morgan Securities LLC	1,950,000
BofA Securities, Inc.	650,000
TD Securities (USA) LLC	650,000
RBC Capital Markets, LLC	325,000
BTIG, LLC	325,000
Citizens JMP Securities, LLC	325,000
Total	6,500,000

Schedule 2

Lock-up Parties

Directors and Officers

1. Andrew F. Walters
2. Ann Kelly
3. Carl Guardino
4. Mary Ann Hanley
5. Heather Hunt
6. Rebecca A. Klein
7. Denise L. Kruger
8. Daniel B. More
9. Nick O. Rowe
10. Carol P. Wallace
11. Bruce A. Hauk
12. Willie Brown
13. Megan Mattern

Annex A

a. **Pricing Disclosure Package**

None

b. **Permitted Free Writing Prospectus**

Pricing Term Sheet, substantially in the form set forth on Annex B

Annex B

FORM OF PRICING TERM SHEET

Registration Statement No. 333-282881
Filed Pursuant to Rule 433

Pricing Term Sheet dated October 29, 2026
Supplementing the Preliminary Prospectus Supplement dated October 29, 2026 (To Prospectus dated October 29, 2026)



H2O America

6,500,000 Equity Units
(Initially Consisting of 6,500,000 Corporate Units)

The information in this pricing term sheet should be read together with the preliminary prospectus supplement dated October 29, 2026 (the "Preliminary Prospectus Supplement"), including the documents incorporated by reference therein, and the accompanying base prospectus dated October 29, 2026, each filed pursuant to Rule 424(b) under the Securities Act of 1933, as amended (Registration Statement No. 333-282881). Terms used but not defined herein have the meanings given to them in the Preliminary Prospectus Supplement.

Company:	H2O America
Company Stock Ticker:	The Nasdaq Global Select Market "HTO"
Pricing Date:	October 29, 2026
Trade Date:	October 30, 2026 ("T")
Settlement Date:	November 3, 2026, which will be the second business day following the Trade Date (such settlement cycle referred to as "T+2"). Under Rule 15c6-1 under the Securities Exchange Act of 1934, as amended, trades in the secondary market generally are required to settle in one business day, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade Corporate Units prior to the business day preceding the Settlement Date will be required, by virtue of the fact that the Corporate Units initially will settle T+2, to specify an alternate settlement cycle at the time of any such trade to prevent a failed settlement. Purchasers of the Corporate Units who wish to trade the Corporate Units prior to the business day preceding the Settlement Date should consult their own advisors.

Registration Format:	SEC Registered
Designation:	Equity Units (each being referred to as an "Equity Unit") that will each have a stated amount of $50 and will initially be in the form of a Corporate Unit (each being referred to as a "Corporate Unit") consisting of a purchase contract issued by the Company to purchase shares of common stock of the Company, par value $0.001 per share (the "Common Stock"), and, initially, a 1/20 undivided beneficial ownership interest in $1,000 principal amount of Remarketable Senior Notes due 2031 to be issued by the Company (the "RSNs").
Number of Equity Units Offered:	6,500,000 (or a total of 7,475,000 if the underwriters exercise their option to purchase up to 975,000 additional Corporate Units, solely for the purpose of covering over-allotments, in full).
Aggregate Offering Amount:	$325,000,000.00 (or a total of $373,750,000.00 if the underwriters exercise their option to purchase up to 975,000 additional Corporate Units, solely for the purpose of covering over-allotments, in full).
Stated Amount per Equity Unit:	$50.00
Public Offering Price:	$50.00 per Corporate Unit / $325,000,000.00 total (or $373,750,000.00 total if the underwriters exercise their option to purchase up to 975,000 additional Corporate Units in full, solely to cover over-allotments).
Estimated Net Proceeds to the Company:	The net proceeds from the sale of Corporate Units will be approximately $315,250,000.00 (or $362,537,500.00 if the underwriters exercise their option to purchase up to 975,000 additional Corporate Units, solely for the purpose of covering over-allotments, in full), after deducting the underwriting discounts and commissions, but before deducting other estimated offering expenses payable by the Company.
Interest Rate on the RSNs:	5.300% (or $53.00 per year per $1,000 principal amount of RSNs), subject to modification in connection with a successful remarketing as described in the Preliminary Prospectus Supplement.
Contract Adjustment Payment Rate:	2.450% per year of the Stated Amount per Equity Unit, or $1.225 per year, in respect of each purchase contract, subject to the Company's right to defer contract adjustment payments as described in the Preliminary Prospectus Supplement.
Deferred Contract Adjustment Payments:	Deferred contract adjustment payments will accrue additional contract adjustment payments at the rate of 7.750% per year until paid, compounded quarterly on each Contract Adjustment Payment Date, to, but excluding, the Contract Adjustment Payment Date on which such deferred contract adjustment payments are paid.
Rate of Total Distributions on the Corporate Units:	7.750% per year

Reference Price:	$50 divided by the Maximum Settlement Rate (such quotient rounded to the nearest $0.0001), which is $58.5686 and is approximately equal to the closing price of the Common Stock on The Nasdaq Global Select Market on the Pricing Date.
Threshold Appreciation Price:	$50 divided by the Minimum Settlement Rate (such quotient rounded to the nearest $0.0001), which is $68.8231 and represents appreciation of approximately 17.5% over the Reference Price.
Minimum Settlement Rate:	0.7265 shares of Common Stock (subject to adjustment as described in the Preliminary Prospectus Supplement).
Maximum Settlement Rate:	0.8537 shares of Common Stock (subject to adjustment as described in the Preliminary Prospectus Supplement).
Purchase Contract Settlement Date:	November 1, 2029 (or if such day is not a business day, the following business day).
RSNs Maturity Date:	November 1, 2031
RSN Interest Payment Dates and Contract Adjustment Payment Dates:	February 1, May 1, August 1 and November 1 of each year, beginning February 1, 2027 (subject to the Company's right to defer the contract adjustment payments as described in the Preliminary Prospectus Supplement and subject to adjustment of RSN interest payment dates upon a successful remarketing of the RSNs).
Book-Running Managers:	Wells Fargo Securities, LLC J.P. Morgan Securities LLC BofA Securities, Inc. TD Securities (USA) LLC
Co-Managers:	RBC Capital Markets, LLC BTIG, LLC Citizens JMP Securities, LLC
Listing:	The Company intends to apply to list the Corporate Units on The Nasdaq Global Select Market under the symbol "HTOEU" and expects trading to begin within 30 days after the Settlement Date.
CUSIP / ISIN:	Corporate Units: 40447N 304 / US40447N3044; Treasury Units: 40447N 205 / US40447N2053; RSNs: 40447N AA4 / US40447NAA46
Allocation of the Purchase Price:	At the time of issuance, the fair market value of the applicable ownership interest in the RSNs will be $50 (or 100% of the issue price of a Corporate Unit) and the fair market value of each purchase contract will be $0 (or 0% of the issue price of a Corporate Unit).

Early Settlement: Subject to certain conditions described under "Description of the Purchase Contracts—Early Settlement" in the Preliminary Prospectus Supplement, a holder of Corporate Units or Treasury Units (each being referred to as a "Treasury Unit") may settle the related purchase contracts at any time prior to 4:00 p.m., New York City time, on the second business day immediately preceding the Purchase Contract Settlement Date, other than during a blackout period (as described in the Preliminary Prospectus Supplement) in the case of Corporate Units. An early settlement may be made only in integral multiples of 20 Corporate Units or 20 Treasury Units; however, if the Treasury portfolio has replaced the RSNs as a component of the Corporate Units following a successful optional remarketing, holders of Corporate Units may settle early only in integral multiples of 80,000 Corporate Units. If a purchase contract is settled early, the number of shares of Common Stock to be issued per purchase contract will be equal to the Minimum Settlement Rate (subject to adjustment as described in the Preliminary Prospectus Supplement).

Early Settlement Upon a Fundamental Change: Subject to certain conditions described under "Description of the Purchase Contracts—Early Settlement Upon a Fundamental Change" in the Preliminary Prospectus Supplement, following a "fundamental change" (as defined in the Preliminary Prospectus Supplement) that occurs prior to the 30th scheduled trading day preceding the Purchase Contract Settlement Date, each holder of a purchase contract, subject to certain conditions described in the Preliminary Prospectus Supplement, will have the right to accelerate and settle the purchase contract early on the "fundamental change early settlement date" (as defined in the Preliminary Prospectus Supplement) at the settlement rate determined as if the applicable market value were determined, for such purpose, based on the "market value averaging period" (as defined in the Preliminary Prospectus Supplement) starting on the 22nd scheduled trading day prior to the fundamental change early settlement date and ending on, and including, the third scheduled trading day immediately preceding the fundamental change early settlement date, plus an additional make-whole amount of shares (such additional make-whole amount of shares being hereafter referred to as the "make-whole shares"). This right is referred to as the "fundamental change early settlement right."

The number of make-whole shares per purchase contract will 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" (as defined in the Preliminary Prospectus Supplement):

	Stock Price													
Effective Date	$10.00	$20.00	$30.00	$40.00	$50.00	$58.57	$63.00	$68.82	$80.00	$100.00	$120.00	$140.00	$160.00	$180.00
November 3, 2026	0.6321	0.3096	0.1990	0.1298	0.0713	0.0000	0.0720	0.1195	0.0918	0.0638	0.0492	0.0400	0.0335	0.0285
November 1, 2027	0.4351	0.2133	0.1382	0.0907	0.0428	0.0000	0.0458	0.0935	0.0673	0.0442	0.0338	0.0276	0.0232	0.0198
November 1, 2028	0.2239	0.1098	0.0717	0.0496	0.0182	0.0000	0.0192	0.0643	0.0379	0.0222	0.0173	0.0142	0.0120	0.0103
November 1, 2029	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The stock prices set forth in the column headers of the table above will be adjusted upon the occurrence of certain events requiring anti-dilution adjustments to the fixed settlement rates in a manner inversely proportional to the adjustments to the fixed settlement rates, as described in the Preliminary Prospectus Supplement. The exact stock price and effective date applicable to a fundamental change may not be set forth on the table, in which case: (i) if the stock price is between two stock prices on the table or the effective date is between two effective dates on the table, the number of make-whole shares will be determined by straight line interpolation based on a 365-day year, as applicable; (ii) if the stock price is in excess of $180.00 per share (subject to adjustment), the number of make-whole shares will be zero; and (iii) if the stock price is less than $10.00 per share (subject to adjustment) (the "minimum stock price"), the number of make-whole shares will be determined as if the stock price equaled the minimum stock price, using straight line interpolation, if the effective date is between two effective dates on the table. Unless the Treasury portfolio has replaced the RSNs as a component of the Corporate Units as a result of a successful optional remarketing, holders of Corporate Units may exercise the fundamental change early settlement right only in integral multiples of 20 Corporate Units. If the Treasury portfolio has replaced the RSNs as a component of Corporate Units, holders of the Corporate Units may exercise the fundamental change early settlement right only in integral multiples of 80,000 Corporate Units. A holder of Treasury Units may exercise the fundamental change early settlement right only in integral multiples of 20 Treasury Units.

Ratings:* [*Intentionally Omitted*]

Trustee: U.S. Bank Trust Company, National Association

***A securities rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time.**

The Company has filed a shelf registration statement (including a Preliminary Prospectus Supplement dated October 29, 2026 and an accompanying prospectus dated October 29, 2026) with the Securities and Exchange Commission (the "SEC"), for the offering to which this communication relates. Before you invest, you should read the Preliminary Prospectus Supplement, the accompanying prospectus and the other documents the Company has filed with the SEC for more complete information about the Company and the offering. You may get these documents for free by visiting EDGAR on the SEC website at www.sec.gov. Alternatively, copies may be obtained from (i) Wells Fargo Securities, LLC, 90 South 7th Street, 5th Floor, Minneapolis, MN 55402, by telephone at 1-800-645-3751 (option #5) or by email at WFScustomerservice@wellsfargo.com; or (ii) J.P. Morgan Securities LLC, c/o Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, NY 11717 or by email at prospectus-eq_fi@jpmchase.com and postsalemanualrequests@broadridge.com.

This communication should be read in conjunction with the Preliminary Prospectus Supplement and the accompanying prospectus. The information in this communication supersedes the information in the Preliminary Prospectus Supplement and the accompanying prospectus to the extent inconsistent with the information in such Preliminary Prospectus Supplement and the accompanying prospectus.

ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.

Exhibit A

FORM OF LOCK-UP AGREEMENT

[●], 2026

Wells Fargo Securities, LLC
J.P. Morgan Securities LLC

As Representatives of the
several Underwriters listed
in Schedule 1 to the
Underwriting Agreement (as defined below)

c/o Wells Fargo Securities, LLC
500 West 33rd Street, 14th Floor
New York, New York 10001

c/o J.P. Morgan Securities LLC
270 Park Avenue
New York, New York 10017

Re: H2O America — Public Offering

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 H2O America, 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 equity units of the Company (the "Securities"). To the extent only a single financial institution acts as representative of the Underwriters under the Underwriting Agreement, then references to Representatives shall be deemed a reference to such Representative in the singular. 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 Wells Fargo 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 30 days after the date of the prospectus relating to the Public Offering (such period, the "Restricted Period"), (1) offer, pledge, lend, 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 shares of common stock, par value $0.001 per share, of the Company (the "Common Stock") or any securities convertible into or exercisable or exchangeable for Common Stock (including, without limitation, 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 Common Stock or any security convertible into or exercisable or exchangeable for Common Stock, in each case other than:

(A) transfers of shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock as a bona fide gift or gifts or charitable contributions, or for bona fide estate planning purposes;

(B) distributions of shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock to (i) the legal representative, heir, beneficiary or a member of the immediate family of the undersigned (for purpose of this Letter Agreement, "immediate family" shall mean any relationship by blood, marriage, or adoption, not more remote than first cousin), or if the undersigned is a trust or other estate planning vehicle, to a trustor or beneficiary of the trust or other estate planning vehicle or to the estate of a beneficiary of such trust or estate planning vehicle, (ii) any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned and/or charitable organizations or (iii) a corporation, partnership, limited liability company or other entity of which the undersigned and the immediate family of the undersigned are the direct or indirect legal and beneficial owners of all the outstanding equity securities or similar interests of such corporation, partnership, limited liability company or other entity;

(C) transfers by will or intestate succession to any beneficiary of, or estate of a beneficiary pursuant to, a trust, will, other testamentary document or applicable laws of descent, or pursuant to a final domestic relations settlement or similar order;

(D) to a nominee or custodian of a person or entity to whom a disposition or transfer would be permissible under clauses (A) through (C) above;

(E) if the undersigned is a corporation, partnership, limited liability company, trust or other business entity, (i) to another corporation, partnership, limited liability company, trust or other business entity that is an affiliate (as defined in Rule 405 under the Securities Act of 1933, as amended) of the undersigned, or to any investment fund or other entity controlling, controlled by, managing or managed by or under common control with the undersigned or affiliates of the undersigned (including, for the avoidance of doubt, where the undersigned is a partnership, to its general partner or a successor partnership or fund, or any other funds managed by such partnership), or (ii) as part of a distribution to members or shareholders of the undersigned;

(F) by operation of law, such as pursuant to a qualified domestic order, divorce settlement, divorce decree or separation agreement;

(G) to the Company from an employee of the Company or a subsidiary of the Company upon death, disability or termination of employment, in each case, of such employee;

(H) as part of a sale of securities acquired by the undersigned after the beginning of the Restricted Period;

(I) the exercise or vesting, including net withholding of shares, of any equity awards pursuant to the Company's equity plans; provided that such restrictions shall apply to any of the undersigned's Common Stock or other securities issued upon such exercise or vesting;

(J) any transfers of the undersigned's Common Stock or other securities to the Company (a) in full or partial payment of taxes or tax withholding obligations required to be paid or satisfied upon the settlement, vesting or exercise of any equity award granted by the Company or (b) in exercise of the Company's right to repurchase or reacquire the undersigned's Common Stock or other securities pursuant to agreements that permit the Company to repurchase or reacquire the undersigned's Common Stock or other securities upon termination of services to the Company;

(K) any conversion of restricted stock units into shares of Common Stock as provided in the applicable restricted stock unit issuance agreement; provided that any so converted shares of Common Stock shall be subject to the restrictions set forth in this Letter Agreement;

(L) the establishment of any contract, instruction or plan (a "Plan") or the amendment of an existing Plan that, in either case, satisfies all of the requirements of Rule 10b5-1 under the Exchange Act; provided that no sales of the undersigned's Common Stock or other securities shall be made pursuant to such a Plan prior to the expiration of the Restricted Period, and such a Plan may only be established or amended, as applicable, if no public announcement of the establishment, amendment or existence thereof and no filing with the Securities and Exchange Commission by the undersigned, the Company or any other person, shall be required, and no such announcement or filing is made voluntarily, by the undersigned, the Company or any other person, prior to the earlier of (i) the expiration of the Restricted Period or (ii) the filing of the Company's Annual Report on Form 10-K for the year ending December 31, 2026 (and any such voluntary public announcement or filing made by any person shall include a statement that the undersigned is not permitted to transfer, sell or otherwise dispose of securities under such Plan during the Restricted Period in contravention of this Letter Agreement); and

(M) pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction that is approved by the Board of Directors of the Company and made to all holders of the Company's capital stock involving a Change of Control (as defined below) of the Company (for purposes hereof, "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, of shares of capital stock if, after such transfer, such person or group of affiliated persons would hold at least a majority of the outstanding voting securities of the Company (or the surviving entity)); provided that in the event that such tender offer, merger, consolidation or other similar transaction is not completed, the undersigned's Securities shall remain subject to the provisions of this Letter Agreement;

provided that (i) in the case of any transfer or distribution pursuant to clause (A), (B), (C), (D) or (E), such transfer shall not involve a disposition for value and each donee, transferee or distributee shall agree to be bound by the terms of this Letter Agreement to the same extent as if the donee, transferee or distributee were a party hereto, (ii) in the case of any transfer or distribution pursuant to clause (B), (D), (E) or (H), no filing by any party (donor, donee, transferor or transferee) under the Exchange Act or other public announcement shall be required or shall be made voluntarily in connection with such transfer or distribution (other than a filing on a Form 5 made after the expiration of the Restricted Period referred to above), and (iii) in the case of clause (A), (C), (F), (G), (I), (J), (K) or (M), no filing by any party under the Exchange Act or other public announcement reporting a reduction in beneficial ownership of shares of Common Stock shall be made voluntarily in connection with such transfer, exercise, vesting or conversion during the Restricted Period and, if the undersigned is required to file a report under the Exchange Act during the Restricted Period, the undersigned shall include a statement in such report to the effect that any such reduction in beneficial ownership resulted solely from transfers, exercises, vestings or conversions described in clause (A), (C), (F), (G), (I), (J), (K) or (M), as the case may be.

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 acknowledges and agrees that the Underwriters have not provided any recommendation or investment advice nor have the Underwriters solicited any action from the undersigned with respect to the Public Offering of the Securities and the undersigned has consulted their own legal, accounting, financial, regulatory and tax advisors to the extent deemed appropriate. The undersigned further acknowledges and agrees that, although the Representatives may be required or choose to provide certain Regulation Best Interest and Form CRS disclosures to you in connection with the Public Offering, the Representatives and the other Underwriters are not making a recommendation to you to participate in the Public Offering or enter into this Letter Agreement and nothing set forth in such disclosures is intended to suggest that the Representatives or any Underwriter is making such a recommendation.

The undersigned understands that, if (i) the Underwriting Agreement does not become effective by [November 30], 2026, (ii) the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Securities to be sold thereunder, or (iii) the Company provides a written notice to the Representatives that the Company does not intend to proceed with any Public Offering, then 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:

EXHIBIT 4.1

H2O AMERICA

TO

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
TRUSTEE

SENIOR NOTE INDENTURE

DATED AS OF NOVEMBER 3, 2026

H2O AMERICA
RECONCILIATION AND TIE BETWEEN TRUST INDENTURE ACT OF 1939 AND
SENIOR NOTE INDENTURE, DATED AS OF NOVEMBER 3, 2026

	TRUST INDENTURE ACT SECTION	INDENTURE SECTION
(S)	310(a)	609
	(a)(2)	609
	(a)(3)	Not Applicable
	(a)(4)	Not Applicable
	(b)	608
		610
(S)	311(a)	613
	311(b)(4)	613(a)
	(b)(6)	613(b)
(S)	312(a)	701, 702 (a)
	(c)	702(b)
(S)	313(a)	703(a)
	313(b)	703(b)
	313(c)	703(c), 704
	(d)	703(c)
(S)	314(a)	704, 1005
	(b)	Not Applicable
	(c)(1)	102
	(c)(2)	102
	(c)(3)	Not Applicable
	(d)	Not Applicable
	(e)	102
(S)	315(a)	601(a)
	(b)	602
	(c)	601(b)
	(d)	601(c)
	(d)(1)	601(a)(1)
	(d)(2)	601(c)(2)
	(d)(3)	601(c)(3)
	(e)	514
(S)	316(a)	101
	(a)(1)(A)	502, 512
	(a)(1)(B)	513
	(a)(2)	Not Applicable
	(b)	508
(S)	317(a)(1)	503
	(a)(2)	504
	(b)	1003
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Parties		
Recitals of the Company		

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SENIOR NOTE INDENTURE

THIS SENIOR NOTE INDENTURE is made as of November 3, 2026, between H2O AMERICA, a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company"), having its principal office at 110 West Taylor Street, San Jose, California 95110, and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, as Trustee (herein called the "Trustee").

W I T N E S S E T H:

WHEREAS, the Company has duly authorized the execution and delivery of this Senior Note Indenture to provide for the issuance from time to time of its unsecured senior debentures, notes or other evidences of indebtedness (herein called the "Senior Notes"), to be issued in one or more series as in this Senior Note Indenture provided; and WHEREAS, all things necessary to make this Senior Note Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, for and in consideration of the premises and the purchase of the Senior Notes by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Senior Notes or of series thereof, as follows:

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS
OF GENERAL APPLICATION

SECTION 101. DEFINITIONS

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

(1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States of America, and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the United States of America at the date of such computation; and

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

Certain terms, used principally in Article Six, are defined in that Article.

"Act," when used with respect to any Holder of a Senior Note, has the meaning specified in Section 104.

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

"Agent" shall mean the Paying Agent, the Security Registrar and any custodian of any Global Security.

"Authenticating Agent" means any Person or Persons authorized by the Trustee to authenticate one or more series of Senior Notes.

"Authorized Officer" means the Chief Executive Officer, President, the Chief Financial Officer, the Treasurer, the Secretary or any Assistant Secretary, and any Vice President or any other officer or agent of the Company duly authorized by the Board of Directors to act in respect of matters relating to this Senior Note Indenture.

"Board of Directors" means either the board of directors of the Company or any duly authorized committee of the officers and/or directors of the Company appointed by that board.

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

"Business Day" means a day other than (i) a Saturday or a Sunday, (ii) a day on which banks in New York City are authorized or obligated by law or executive order to remain closed, or (iii) a day on which the Trustee's Corporate Trust Office is closed for business.

"Capital Stock" means any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, as amended, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Company" means the Person named as the "Company" in the first paragraph of this instrument until a successor corporation shall have become such pursuant to the applicable provisions of this Senior Note Indenture, and thereafter "Company" shall mean such successor corporation.

"Company Request" or "Company Order" means a written request or order signed in the name of the Company by an Authorized Officer, and delivered to the Trustee.

"Corporate Trust Office" means the office of the Trustee at which at any particular time this Indenture shall be principally administered, which office at the date of execution of this Senior Note Indenture is located at City Place I, 185 Asylum Street, 27th Floor, Hartford, CT 06103, Attention: Global Corporate Trust, and for purposes of agent services and Section 1002, such corporate trust office shall include the office or agency of the Trustee located at 111 Fillmore Avenue, St. Paul, MN 55107, Attention: Global Corporate Trust, or such other address as the Trustee may designate from time to time by notice to 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 Company).

"Corporation" includes corporations, partnerships, limited liability companies, associations, companies and business trusts.

"Defaulted Interest" has the meaning specified in Section 305.

"Depositary" means, unless otherwise specified by the Company pursuant to either Section 203 or 301, with respect to Senior Notes of any series issuable or issued as a Global Security, The Depository Trust Company or any successor thereto registered as a clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation.

"Dollars" and "$" means the currency of The United States of America.

"Event of Default" has the meaning specified in Section 501.

"Foreign Currency" means any currency or currency unit issued by a government other than the government of The United States of America.

"Foreign Government Obligations" means, with respect to Senior Notes of any series that are denominated in a Foreign Currency, direct obligations of, or obligations guaranteed by, the government that issued or caused to be issued such currency for the payment of which obligations its full faith and credit is pledged and which are not callable or redeemable at the option of the issuer thereof.

"Global Security" means, with respect to any series of Senior Notes issued hereunder, a Senior Note that is executed by the Company and authenticated and delivered by the Trustee to the Depositary or pursuant to the Depositary's instruction, all in accordance with Section 203 of this Indenture and any supplemental indenture hereto.

"Holder," when used with respect to any Senior Note, means the Person in whose name the Senior Note is registered in the Security Register.

"Indenture" or "Senior Note Indenture" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more supplemental indentures entered into pursuant to the applicable provisions hereof and shall include the terms of the particular series of Senior Notes established as contemplated by Section 301.

"Interest Payment Date," when used with respect to any series of Senior Notes, means the dates established for the payment of interest thereon, as provided in the supplemental indenture for such series.

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

"Officers' Certificate" means a certificate signed by the Chairman of the Board, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Company, and who shall be acceptable to the Trustee.

"Outstanding," when used with respect to Senior Notes, means, as of the date of determination, all Senior Notes theretofore authenticated and delivered under this Indenture, except:

1. Senior Notes theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

2. Senior Notes for whose payment or redemption money and/or U.S. Government Obligations or Foreign Government Obligations, as applicable (if permitted hereby) in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Senior Notes; provided that if such Senior Notes are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision for the giving of such notice satisfactory to the Trustee has been made;

3. Senior Notes that have been paid or in exchange for or in lieu of which other Senior Notes have been authenticated and delivered pursuant to this Indenture, other than any such Senior Notes in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Senior Notes are held by a bona fide purchaser in whose hands such Senior Notes are valid obligations of the Company; and

4. Senior Notes, or portions thereof, converted into or exchanged for another security if the terms of such Senior Notes provide for such conversion or exchange;

provided, however, that in determining, during any period in which any Senior Notes of a series are owned by any Person other than the Company or any Affiliate thereof, whether the Holders of the requisite principal amount of Outstanding Senior Notes of such series have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Senior Notes of such series owned by the Company or any Affiliate thereof shall be disregarded and deemed not to be Outstanding. In determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Senior Notes that a Responsible Officer of the Trustee knows to be so owned by the Company or an Affiliate of the Company in the above circumstances shall be so disregarded. Senior Notes so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Senior Notes and that the pledgee is not the Company or any Affiliate of the Company. Upon request of the Trustee, the Company shall promptly furnish to the Trustee an Officers' Certificate listing and identifying all Senior Notes, if any, known by the Company to be owned or held by or for the account of the Company or any Affiliate of the Company, and, subject to Section 601, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Senior Notes not listed therein are Outstanding for the purpose of any such determination.

"Paying Agent" means U.S. Bank Trust Company, National Association or any Person authorized by the Company to pay the principal of (and premium, if any) or interest on any Senior Notes on behalf of the Company.

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

"Predecessor Security" of any particular Senior Note means every previous Senior Note evidencing all or a portion of the same debt as that evidenced by such particular Senior Note; and, for the purposes of this definition, any Senior Note authenticated and delivered under Section 304 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Senior Note shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Senior Note.

"Redemption Date," when used with respect to any Senior Note to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price," when used with respect to any Senior Note to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"Regular Record Date" for the interest payable on any Interest Payment Date on the Senior Notes of any series means the date specified for that purpose as contemplated by Section 301, whether or not a Business Day.

"Responsible Officer," when used with respect to the Trustee, means any officer of the Trustee within the Corporate Trust Office having direct responsibility for the administration of this Indenture, and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 303.

"Senior Note" has the meaning stated in the first recital of this Indenture and more particularly means any Senior Notes authenticated and delivered under this Indenture.

"Special Record Date" for the payment of any Defaulted Interest on the Senior Notes of any series means a date fixed by the Trustee pursuant to Section 305.

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

"Subsidiary," of any specified person means any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such person or one or more of the other Subsidiaries of that person or a combination thereof.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended, and any reference herein to the Trust Indenture Act or a particular provision thereof shall mean such Trust Indenture Act or provision, as the case may be, as amended or replaced from time to time.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this instrument until a successor Trustee shall have become such with respect to one or more series of Senior Notes 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 Senior Notes of any series shall mean the Trustee with respect to Senior Notes of that series.

"U.S. 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 to the timely payment of principal and interest as a full faith and credit obligation by the United States of America, which, in either case, 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 which is a member of the Federal Reserve System and having a combined capital and surplus of at least $50,000,000 as custodian with respect to any such obligation evidenced by such depository receipt or a specific payment of interest on or principal of any such obligation held by such custodian for the account of the holder of a depository receipt; provided, however, 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 in respect of the obligation set forth in (i) or (ii) above or the specific payment of interest on or principal of such obligation evidenced by such depository receipt.

"Vice President," when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president."

SECTION 102. COMPLIANCE CERTIFICATES AND OPINIONS

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

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

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

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 each such individual, 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, in the opinion of each such individual, such condition or covenant has been complied with.

SECTION 103. FORM OF DOCUMENTS DELIVERED TO TRUSTEE

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

Any certificate 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, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous. Any Opinion of Counsel may be rendered, insofar as it relates to matters of New York law, in reliance on an opinion of New York counsel, which may be an opinion contemporaneously delivered to a third party or parties and shall expressly permit such reliance.

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

SECTION 104. ACTS OF HOLDERS

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent, shall be sufficient for any purpose of this Indenture and (subject to Section 601) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

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

(c) The principal amount and serial numbers of Senior Notes held by any Person, and the date of holding the same, shall be proved by the Security Register.

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

(e) The fact and date of execution of any such instrument or writing and the authority of the Person executing the same may also be proved in any other manner which the Trustee deems sufficient; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section.

(f) If the Company shall solicit from the Holders of Senior Notes of any series any Act, the Company may, at its option, by Board Resolution, fix in advance a record date for the determination of Holders of Senior Notes entitled to take such Act, but the Company shall have no obligation to do so. Any such record date shall be fixed at the Company's discretion. If such a record date is fixed, such Act may be sought or given before or after the record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders of Senior Notes for the purpose of determining whether Holders of the requisite proportion of Senior Notes of such series Outstanding have authorized or agreed or consented to such Act, and for that purpose the Senior Notes of such series Outstanding shall be computed as of such record date.

SECTION 105. NOTICES, ETC., TO TRUSTEE AND COMPANY

Any request, demand, authorization, direction, notice, consent, election, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder of a Senior Note or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with and actually received by a Responsible Officer of the Trustee at its Corporate Trust Office, Attention: Global Corporate Trusts, or

(2) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to the attention of its Secretary, at 110 West Taylor Street, San Jose, California 95110, or at any other address previously furnished in writing to the Trustee by the Company.

SECTION 106. NOTICE TO HOLDERS OF SENIOR NOTES; WAIVER

Except as otherwise expressly provided herein, where this Indenture provides for notice to Holders of Senior Notes of any event, such notice shall be sufficiently given if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such Notice.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders of Senior Notes shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Notwithstanding any other provision of this Indenture or any Senior Note, where this Indenture or any Senior Note provides for notice of any event (including any notice of redemption) to a Holder of a Global Security (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary (or its designee) pursuant to the standing instructions from the Depositary or its designee, including by electronic mail in accordance with the applicable procedures of the Depositary.

SECTION 107. CONFLICT WITH TRUST INDENTURE ACT

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required to be a part of and govern this Indenture, such required provision shall control.

SECTION 108. 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 109. SUCCESSORS AND ASSIGNS

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 110. SEPARABILITY CLAUSE

In case any provision in this Indenture or the Senior Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 111. BENEFITS OF INDENTURE

Nothing in this Indenture or the Senior Notes, express or implied, shall give to any Person, other than the parties hereto, their successors hereunder and the Holders of Senior Notes any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 112. GOVERNING LAW

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

SECTION 113. LEGAL HOLIDAYS

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Senior Note shall not be a Business Day, then (notwithstanding any other provision of this Indenture or of the Senior Notes) payment of interest or principal (and premium, if any) need not be made on such date, but may be made on the next succeeding Business Day, except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, provided that no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be.

SECTION 114. APPOINTMENT OF AGENT FOR SERVICE

By the execution and delivery of this Indenture, the Secretary of the Company is hereby appointed as the Company's agent upon which process may be served in any legal action or proceeding which may be instituted in any Federal or State court in the Borough of Manhattan, New York City, arising out of or relating to the Senior Notes or this Indenture. Service of process upon such agent at the office of such agent at 110 West Taylor Street, San Jose, California 95110, Attention: Secretary, or at such other address as shall be given to the Trustee as provided in Section 105, shall be deemed in every respect effective service of process upon the Company in any such legal action or proceeding, and the Company hereby submits to the jurisdiction of any such court in which any such legal action or proceeding is so instituted. Such appointment shall be irrevocable so long as the Holders of Senior Notes shall have any rights pursuant to the terms thereof or of this Indenture until the appointment of a successor by the Company and such successor's acceptance of such appointment. The Company further agrees to take any and all action, including the execution and filing of any and all such documents and instruments, as may be necessary to continue such designation and appointment of such agent or successor.

ARTICLE TWO

FORMS OF SENIOR NOTES

SECTION 201. FORMS GENERALLY

The Senior Notes of each series shall be in substantially the form appended to the supplemental indenture authorizing such series, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Senior Notes, as evidenced by their execution of the Senior Notes.

The Senior Notes of each series shall be issuable in registered form without coupons in such denominations as shall be specified as contemplated by Section 301. In the absence of such specified denominations with respect to the Senior Notes of any series, the Senior Notes of such series shall be issuable in denominations of $1,000 and any integral multiple thereof.

The definitive Senior Notes may be printed, typewritten, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Senior Notes, as evidenced by their execution of such Senior Notes.

SECTION 202. FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION

The form of the Trustee's Certificate of Authentication for a series of Senior Notes shall be in substantially the form appended to the supplemental indenture authorizing such series.

SECTION 203. SENIOR NOTES ISSUABLE IN THE FORM OF A GLOBAL SECURITY

(a) If the Company shall establish pursuant to Section 301 that the Senior Notes of a particular series are to be issued in whole or in part in the form of one or more Global Securities, then the Company shall execute and the Trustee shall, in accordance with Section 302 and the Company Order delivered to the Trustee thereunder, authenticate and deliver such Global Security or Securities, which (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of the Outstanding Senior Notes of such series to be represented by such Global Security or Securities, (ii) may provide that the aggregate amount of Outstanding Senior Notes represented thereby may from time to time be increased or reduced to reflect exchanges, (iii) shall be registered in the name of the Depositary for such Global Security or Securities or its nominee, (iv) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary's instruction and (v) shall bear a legend in accordance with the requirements of the Depositary.

(b) Notwithstanding any other provision of this Section 203 or of Section 303, subject to the provisions of paragraph (c) below, unless the terms of a Global Security expressly permit such Global Security to be exchanged in whole or in part for individual Senior Notes, a Global Security may be transferred, in whole but not in part and in the manner provided in Section 303, only to a nominee of the Depositary for such Global Security, or to the Depositary, or to a successor Depositary for such Global Security selected or approved by the Company, or to a nominee of such successor Depositary.

(c) (1) If at any time the Depositary for a Global Security notifies the Company that it is unwilling or unable to continue as Depositary for such Global Security or if at any time the Depositary for the Senior Notes for such series shall no longer be eligible or in good standing under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation, the Company shall appoint a successor Depositary with respect to such Global Security. If a successor Depositary for such Global Security is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of individual Senior Notes of such series in exchange for such Global Security, will authenticate and deliver individual Senior Notes of such series of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of the Global Security in exchange for such Global Security.

(2) The Company may at any time and in its sole discretion, subject to the procedures of the Depositary, determine that the Senior Notes of any series issued or issuable in the form of one or more Global Securities shall no longer be represented by such Global Security or Securities. In such event the Company will execute, and the Trustee, upon receipt of a Company Request for the authentication and delivery of individual Senior Notes of such series in exchange in whole or in part for such Global Security, will authenticate and deliver individual Senior Notes of such series of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such Global Security or Securities representing such series in exchange for such Global Security or Securities.

(3) If specified by the Company pursuant to Section 301 with respect to Senior Notes issued or issuable in the form of a Global Security, the Depositary for such Global Security may surrender such Global Security in exchange in whole or in part for individual Senior Notes of such series of like tenor and terms in definitive form on such terms as are acceptable to the Company and such Depositary. Thereupon the Company shall execute, and upon receipt of a Company request for authentication and delivery, the Trustee shall authenticate and deliver, without service charge, (A) to each Person specified by such Depositary a new Senior Note or Notes of the same series of like tenor and terms and of any authorized denomination as requested by such Person in aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Global Security; and (B) to such Depositary a new Global Security of like tenor and terms and in an authorized denomination equal to the difference, if any, between the principal amount of the surrendered Global Security and the aggregate principal amount of Senior Notes delivered to Holders thereof.

(4) In any exchange provided for in any of the preceding three paragraphs, the Company will execute and upon receipt of a Company request for authentication and delivery, the Trustee will authenticate and deliver individual Senior Notes in definitive form in authorized denominations. Upon the exchange of the entire principal amount of a Global Security for individual Senior Notes, such Global Security shall be cancelled by the Trustee. Except as provided in the preceding paragraph, Senior Notes issued in exchange for a Global Security pursuant to this Section shall be registered in such names and in such authorized denominations as the Depositary for such Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. Provided that the Company and the Trustee have so agreed, the Trustee shall deliver such Senior Notes to the Persons in whose names the Senior Notes are registered.

(5) Any endorsement of a Global Security to reflect the amount, or any increase or decrease in the amount, or changes in the rights of Holders, of Outstanding Senior Notes represented thereby shall be made in such manner and by such Person or Persons as shall be specified therein or in the Company Order to be delivered pursuant to Section 302 with respect thereto. Subject to the provisions of Section 302, the Trustee shall deliver and redeliver any such Global Security in the manner and upon instructions given by the Person or Persons specified therein or in the applicable Company Order. If a Company Order pursuant to Section 302 has been, or simultaneously is, delivered, any instructions by the Company with respect to such Global Security shall be in writing but need not be accompanied by or contained in an Officers' Certificate and need not be accompanied by an Opinion of Counsel.

(6) The Company has entered into a letter of representations with the Depositary in the form provided by the Depositary, and the Trustee and each agent are hereby authorized to act in accordance with such letter and the applicable procedures of the Depositary. The owners of beneficial interests in any Global Security shall have no rights under this Indenture with respect to such Global Security, and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the sole Holder and owner of such Global Security for all purposes whatsoever. None of the Company, the Trustee, any Paying Agent, the Security Registrar or any Authenticating Agent will have any responsibility or liability for any act or omission of the Depositary or for any aspect of the records relating to, or payments made on account of, beneficial ownership interests in a Global Security.

(7) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Note, 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 Global Note 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 purchase) or the payment of any amount or delivery of any Global Note (or other security or property) under or with respect to such Global Notes. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Global Notes 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 Notes). The rights of beneficial owners in any Global Notes shall be exercised only through the Depositary subject to the applicable rules and procedures of the Depositary. The Trustee 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.

(8) Neither the Trustee nor the Security Registrar shall have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof. Neither the Trustee nor any of its agents shall have any responsibility for any actions taken or not taken by the Depositary.

ARTICLE THREE

THE SENIOR NOTES

SECTION 301. AMOUNT UNLIMITED; ISSUABLE IN SERIES

The aggregate principal amount of Senior Notes which may be authenticated and delivered under this Indenture is unlimited.

The Senior Notes may be issued in one or more series. There may be established, pursuant to one or more supplemental indentures hereto, prior to the issuance of Senior Notes of any series,

(1) the title of the Senior Notes of the series (which shall distinguish the Senior Notes of the series from Senior Notes of all other series);

(2) any limit upon the aggregate principal amount of the Senior Notes of the series which may be authenticated and delivered under this Indenture (except for Senior Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Senior Notes of the series pursuant to Sections 203, 303, 304, 907 or 1107);

(3) the Person to whom interest on a Senior Note of the series shall be payable if other than the Person in whose name that Senior Note (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest;

(4) the date or dates on which the principal of the Senior Notes of the series is payable;

(5) the rate or rates at which the Senior Notes of the series shall bear interest, if any, or any method by which such rate or rates shall be determined, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable, the Regular Record Date for the interest payable on Senior Notes on any Interest Payment Date and the basis upon which interest shall be calculated if other than that of a 360-day year consisting of twelve 30-day months;

(6) the place or places where the principal of (and premium, if any) and interest, if any, on Senior Notes of the series shall be payable;

(7) the period or periods within which, the price or prices at which and the terms and conditions upon which Senior Notes of the series may be redeemed, in whole or in part, at the option of the Company;

(8) the obligation, if any, of the Company to redeem or purchase Senior Notes of the series pursuant to any sinking fund or analogous provision 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, Senior Notes of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(9) the date or dates, if any, after which such Senior Notes may be converted or exchanged at the option of the Holder into or for shares of common stock of the Company and the terms for any such conversion or exchange;

(10) if other than denominations of $1,000 and any integral multiple thereof, the denominations in which Senior Notes of the series shall be issuable;

(11) if the amount of payments of principal of (and premium, if any) or interest on the Senior Notes of the series may be determined with reference to an index or formula, the manner in which such amounts shall be determined;

(12) if other than the principal amount thereof, the portion of the principal amount of Senior Notes of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502;

(13) the currency of denomination of the Senior Notes of the series, which may be Dollars or any Foreign Currency, and if such currency of denomination is a composite currency, the agency or organization, if any, responsible for overseeing such composite currency;

(14) the designation of the currency, currencies or currency units in which payment of the principal of or interest, if any, on the Senior Notes of the series will be made;

(15) if payments of principal of or interest, if any, on the Senior Notes of the series are to be made in one or more currencies or currency units other than that or those in which such Senior Notes are denominated, the manner in which the exchange rate with respect to such payments will be determined;

(16) the manner in which the amounts of payment of principal of or interest, if any, on the Senior Notes of the series will be determined, if such amounts may be determined by reference to an index based on a currency or currencies or by reference to a commodity, commodity index, stock exchange index or financial index;

(17) the provisions, if any, relating to any security provided for the Senior Notes of the series;

(18) any deletions from, modifications of or additions to the Events of Default or covenants of the Company as provided herein pertaining to the Senior Notes of the series, and any change in the rights of the Trustee or Holders of such series pursuant to Section 901 or 902;

(19) any additions to the definitions currently set forth in this Indenture with respect to such series;

(20) any Depositary, interest rate calculation agent, exchange rate calculation agent or other agent with respect to Senior Notes of such series if other than those appointed herein;

(21) the provisions, if any, relating to conversion or exchange of any Senior Notes of such series, including if applicable, the conversion or exchange price, the conversion or exchange period, the securities or other property into which the Senior Notes will be convertible, provisions as to whether conversion or exchange will be mandatory, at the option of the Holders thereof or at the option of the Company, the events requiring an adjustment of the conversion price or exchange price and provisions affecting conversion or exchange if such series of Senior Notes are redeemed;

(22) whether the Senior Notes of the series shall be issued in whole or in part in the form of a Global Security or Securities; the terms and conditions, if any, upon which such Global Security or Securities may be exchanged in whole or in part for certificated Senior Notes of such series and of like tenor of any authorized denomination and the circumstances under which such exchange may occur, if other than in the manner provided for in Section 203; the Depositary for such Global Security or Securities; and the form of any legend or legends to be borne by any such Global Security in addition to or in lieu of the legend referred to in Section 203;

(23) any restriction or condition on the transferability of such Senior Notes;

(24) whether any of the Company's direct or indirect Subsidiaries will guarantee the Senior Notes of that series; and

(25) any other terms of the series (which may supplement, modify or delete any provision of this Indenture insofar as it applies to such series), including terms that may be required under applicable law or regulations or advisable in connection with the marketing of Senior Notes of that series.

All Senior Notes of any one series shall be substantially identical except as to the date or dates from which interest, if any, shall accrue and denomination and except as may otherwise be provided in the terms of such Senior Notes determined or established as provided above. All Senior Notes of any one series need not be issued at the same time and, unless otherwise provided, a series may be reopened for issuances of additional Senior Notes of such series.

The Company shall be responsible for making all calculations called for under the Senior Notes, including but not limited to determination of any Redemption Price, premium, if any, interest rate and any additional amounts or other amounts payable on the Senior Notes. The Company will make such calculations in good faith and, absent manifest error, its calculations will be final and binding on the Holders. The Company will provide a schedule of its calculations to the Trustee when requested by the Trustee, and the Trustee is entitled to rely conclusively on the accuracy of the Company's calculations without independent verification. The Trustee shall forward the Company's calculations to any Holder upon the written request of such Holder.

SECTION 302. EXECUTION, AUTHENTICATION, DELIVERY AND DATING

The Senior Notes shall be executed on behalf of the Company by any two Authorized Officers. The signature of any of these officers on the Senior Notes may be manual, electronic or facsimile.

Senior Notes bearing the manual, electronic or facsimile signatures of individuals who were at the time relevant to the authorization thereof Authorized Officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Senior Notes or did not hold such offices at the date of such Senior Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Senior Notes of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Senior Notes, and the Trustee, in accordance with the Company Order, shall authenticate and deliver such Senior Notes. If all of the Senior Notes of any series are not to be issued at one time and if the supplemental indenture establishing such series shall so permit, such Company Order may set forth procedures acceptable to the Trustee for the issuance of such Senior Notes and determining the terms of particular Senior Notes of such series, such as interest rate, maturity date, date of issuance and date from which interest shall accrue. In authenticating Senior Notes hereunder, and accepting the additional responsibilities under this Indenture in relation to such Senior Notes, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon:

(1) an Opinion of Counsel, to the effect that:

(a) the form and terms of such Senior Notes or the manner of determining such terms have been established in conformity with the provisions of this Indenture; and

(b) such Senior Notes, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting the enforcement of creditors' rights and to general equity principles; and

(2) an Officers' Certificate stating, to the best knowledge of the signer of such certificate, that (A) no event which is, or after notice or lapse of time would become, an Event of Default with respect to any of the Senior Notes shall have occurred and be continuing and (B) all conditions precedent provided for in this Indenture relating to the authentication and delivery of such Senior Notes have been complied with.

The Trustee shall not be required to authenticate such Senior Notes if the issue of such Senior Notes pursuant to this Indenture will affect the Trustee's own rights, duties, indemnities or immunities under the Senior Notes and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

If all the Senior Notes of any series are not to be issued at one time, it shall not be necessary to deliver an Opinion of Counsel and Officers' Certificate at the time of issuance of each such Senior Note, but such opinion and certificate shall be delivered at or before the time of issuance of the first Senior Note of such series to be issued.

Each Senior Note shall be dated the date of its authentication.

No Senior Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Senior Note a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Senior Note shall be conclusive evidence, and the only evidence, that such Senior Note has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture.

SECTION 303. REGISTRATION, REGISTRATION OF TRANSFER AND EXCHANGE

The Company shall cause to be kept at the Corporate Trust Office of the Security Registrar designated pursuant to this Section 303 or Section 1002 a register (referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Senior Notes and of transfers of Senior Notes. The Trustee is hereby initially appointed as "Security Registrar" for the purpose of registering Senior Notes and transfers of Senior Notes as herein provided. In acting hereunder and in connection with the Senior Notes, the Paying Agent and the Security Registrar shall act solely as an agent of the Company, and will not thereby assume any obligations towards or relationship of agency or trust for or with any Holder.

Subject to Section 203, upon surrender for registration of transfer of any Senior Note of any series at the office or agency maintained for such purpose for such series, the Company shall execute, and upon receipt of a Company Request for authentication and delivery, the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Senior Notes of the same series, Stated Maturity and original issue date, of any authorized denominations and of like tenor and aggregate principal amount.

Subject to Section 203, Senior Notes of any series may be exchanged, at the option of the Holder, for Senior Notes of the same series, Stated Maturity and original issue date, of any authorized denominations and of like tenor and aggregate principal amount, upon surrender of the Senior Notes to be exchanged at any such office or agency.

Whenever any Senior Notes are so surrendered for exchange, the Company shall execute, and upon receipt of a Company Request for authentication and delivery, the Trustee shall authenticate and deliver, the Senior Notes that the Holder making the exchange is entitled to receive.

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

Every Senior Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Senior Notes, but the Company, the Trustee and/or any Agent 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 or exchange of Senior Notes, other than exchanges pursuant to Section 304, 907 or 1107 not involving any transfer.

The Company shall not be required (i) to issue, to register the transfer of or to exchange Senior Notes of any series during a period of 15 days immediately preceding the date notice is given identifying the serial numbers of the Senior Notes of that series called for redemption, or (ii) to issue, to register the transfer of or to exchange any Senior Notes so selected for redemption in whole or in part, except the unredeemed portion of any Senior Note being redeemed in part.

None of the Company, the Trustee, any Paying Agent or the Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

SECTION 304. MUTILATED, DESTROYED, LOST AND STOLEN SENIOR NOTES

If any mutilated Senior Note is surrendered to the Trustee, the Company shall execute and upon receipt of a Company Request for authentication and delivery, the Trustee shall authenticate and deliver in exchange therefor a new Senior Note of the same series, Stated Maturity and original issue date, 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 Senior Note 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 Senior Note has been acquired by a bona fide purchaser, the Company shall execute and upon its receipt of a Company Request for authentication and delivery, the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Senior Note, a new Senior Note of the same series, Stated Maturity and original issue date, and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Senior Note has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Senior Note, pay such Senior Note.

Upon the issuance of any new Senior Note under this Section, the Company, the Trustee and/or any Agent 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 or any Agents (and their respective counsel)) connected therewith.

Every new Senior Note of any series issued pursuant to this Section in lieu of any destroyed, lost or stolen Senior Note shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Senior Note shall be at any time enforceable by anyone, and any such new Senior Note shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Senior Notes of that series duly issued hereunder.

The provisions of this Section 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 Senior Notes.

SECTION 305. PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED

Unless otherwise provided as contemplated by Section 301 with respect to any series of Senior Notes, interest on any Senior Note that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Senior Note (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Senior Note of any series that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Senior Notes of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Senior Note of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be delivered to each Holder of Senior Notes of such series at the address of such Holder as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Senior Notes of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).

(2) The Company may make payment of any Defaulted Interest on the Senior Notes of any series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Senior Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee.

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

SECTION 306. PERSONS DEEMED OWNERS

Prior to due presentment of a Senior Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Senior Note is registered as the owner of such Senior Note for the purpose of receiving payment of principal of (and premium, if any) and (subject to Section 305) interest on such Senior Note and for all other purposes whatsoever, whether or not such Senior Note be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 307. CANCELLATION

All Senior Notes surrendered for payment, redemption, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by the Trustee. The Company may at any time deliver to the Trustee for cancellation any Senior Notes previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Senior Notes so delivered shall be canceled by the Trustee. No Senior Notes shall be authenticated in lieu of or in exchange for any Senior Notes canceled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Senior Notes held by the Trustee shall be disposed of in accordance with a Company Order and the Trustee shall promptly deliver a certificate of disposition to the Company.

SECTION 308. COMPUTATION OF INTEREST

Except as otherwise specified as contemplated by Section 301 for Senior Notes of any series, interest on the Senior Notes of each series shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

SECTION 309. CUSIP NUMBERS

The Company in issuing the Senior Notes may use "CUSIP" numbers, ISIN numbers or other similar identifiers (if then generally in use), and, if so, the Trustee may use such numbers in notices (including 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 Senior Notes or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Senior Notes, and any such notice shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee in writing of any change in the CUSIP, ISIN or other numbers assigned to the Senior Notes.

ARTICLE FOUR

SATISFACTION AND DISCHARGE; DEFEASANCE

SECTION 401. SATISFACTION AND DISCHARGE OF INDENTURE

This Indenture shall, upon Company Request, cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Senior Notes herein expressly provided for) and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Senior Notes theretofore authenticated and delivered (other than (i) Senior Notes that have been destroyed, lost or stolen and that have been replaced or paid as provided for in Section 304 and (ii) Senior Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 1003) have been delivered to the Trustee for cancellation; or

(B) all such Senior Notes not theretofore delivered to the Trustee for cancellation

(i) have become due and payable,

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

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

and the Company, in the case of (B) above, has deposited or caused to be deposited with the Trustee as funds in trust for the purpose described above (i) money in an amount sufficient, or (ii) (a) U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide not later than one day before the due date of any payment referred to in clause (B) of this subparagraph money in an amount, or (b) a combination of such money and such U.S. Government Obligations, sufficient to pay and discharge the entire indebtedness on such Senior Notes not theretofore delivered to the Trustee for cancellation, for principal (and premium, if any) and interest to the date of the Stated Maturity or Redemption Date, as the case may be, or if later, the date of payment (provided, that in connection with any redemption that requires the payment of any premium, the amount deposited with the Trustee shall be sufficient for purposes of this clause (B) to the extent that an amount is deposited with the Trustee equal to such premium calculated as of the date of such deposit, with any deficit as of the redemption date only required to be deposited with the Trustee on or prior to the applicable redemption date);

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

In the event there are Senior Notes of two or more series hereunder, the Trustee shall be required to execute an instrument acknowledging satisfaction and discharge of this Indenture only if requested to do so with respect to Senior Notes of all series as to which it is Trustee and if the other conditions thereto are met. In the event there are two or more Trustees hereunder, then the effectiveness of any such instrument shall be conditioned upon receipt of such instruments from all Trustees hereunder.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 607, the obligations of the Company to any Authenticating Agent under Section 614, and, if money or U.S. Government Obligations shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section, the obligations of the Trustee under Section 402 and the last paragraph of Section 1003 shall survive such satisfaction and discharge.

SECTION 402. APPLICATION OF TRUST MONEY; INDEMNIFICATION

(a) Subject to the provisions of the last paragraph of Section 1003, all money or U.S. Government Obligations deposited with the Trustee pursuant to Section 401, all money and U.S. Government Obligations or Foreign Government Obligations deposited with the Trustee pursuant to Sections 403 or 404, and all money received by the Trustee in respect of U.S. Government Obligations or Foreign Government Obligations deposited with the Trustee pursuant to Sections 401, 403 or 404, shall be held in trust and applied by it, in accordance with the provisions of the Senior Notes, and this Indenture, to the payment, either directly or through any Paying Agent (including the Company or an Affiliate acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with or received by the Trustee.

(b) The Company shall pay and shall indemnify the Trustee and the Agents against any tax, fee or other charge imposed on or assessed against U.S. Government Obligations or Foreign Government Obligations deposited pursuant to Sections 401, 403 or 404, or the interest and principal received in respect of such obligations other than any amount payable by or on behalf of Holders.

(c) The Trustee shall deliver or pay to the Company from time to time upon Company Request any U.S. Government Obligations, Foreign Government Obligations or money held by it as provided in Section 401, 403 or 404 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the same opinion given to the Trustee pursuant to said Section), is then in excess of the amount thereof which then would have been required to be deposited for the purpose for which such obligations or money was deposited or received.

SECTION 403. LEGAL DEFEASANCE

Unless this Section 403 is otherwise specified, pursuant to Section 301, to be inapplicable to Senior Notes of any series, the Company shall be deemed to have paid and discharged the entire indebtedness on all the Outstanding Senior Notes of any series on the 91st day after the date of the deposit referred to in subparagraph (d) hereof, and the provisions of this Indenture, as it relates to such Outstanding Senior Notes of such series, shall no longer be in effect (and the Trustee, at the expense of the Company, shall, upon receipt of a Company Order, execute instruments acknowledging the same), except as to:

(a) the rights of Holders of Senior Notes of such series to receive, from the trust funds described in subparagraph (d) hereof, (i) payment of the principal of and each installment of principal of and interest on the Outstanding Senior Notes of such series on the Maturity of such principal or installment of principal or interest and (ii) the benefit of any mandatory sinking fund payments applicable to the Senior Notes of such series on the day on which such payments are due and payable in accordance with the terms of this Indenture and the Senior Notes of such series;

(b) the provisions of Sections 303, 304, 402, 403 and 1003; and

(c) the rights, powers, trust, indemnities and immunities of the Trustee and the Agents hereunder and the Company's obligations in connection therewith; provided that the following conditions shall have been satisfied:

(1) the Company shall have deposited or caused to be irrevocably deposited (except as provided in Section 402(c)) 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 such Senior Notes, (i) in the case of Senior Notes of such series denominated in Dollars, cash in Dollars and/or U.S. Government Obligations, or (ii) in the case of Senior Notes of such series denominated in a Foreign Currency (other than a composite currency), money and/or Foreign Government Obligations, which through the payment of interest and principal in respect thereof in accordance with their terms, will provide (and without reinvestment and assuming no tax liability will be imposed on such Trustee), not later than one day before the due date of any payment of money, an amount in cash, sufficient, in the opinion of a nationally recognized firm of independent public accountants or investment bank expressed in a written certification thereof delivered to the Trustee, to pay and discharge each installment of principal of and interest, if any, on and any mandatory sinking fund payments in respect of all the Senior Notes of such series on the dates such installments of interest or principal and such sinking fund payments are due (provided, that in connection with any redemption that requires the payment of any premium, the amount deposited with the Trustee shall be sufficient for purposes of this clause (1) to the extent that an amount is deposited with the Trustee equal to such premium calculated as of the date of such deposit, with any deficit as of the redemption date only required to be deposited with the Trustee on or prior to the applicable redemption date);

(2) such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(3) no Event of Default with respect to the Senior Notes of such series shall have occurred and be continuing on the date of such deposit or during the period ending on the 91st day after such date;

(4) the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of execution of this Indenture, there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the Senior Notes of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to Federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred;

(5) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company; and

(6) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the defeasance contemplated by this Section have been complied with.

SECTION 404. COVENANT DEFEASANCE

Unless this Section 404 is otherwise specified, pursuant to Section 301, to be inapplicable to Senior Notes of any series, the Company may omit to comply with respect to the Senior Notes of any series with any term, provision or condition set forth under Sections 515, 704, 801, 1004 and 1005 as well as any additional covenants specified in a supplemental indenture for such series of Senior Notes delivered pursuant to Section 301 (and the failure to comply with any such covenants shall not constitute an Event of Default with respect to such series under Section 501) and the occurrence of any event specified in a supplemental indenture for such series of Senior Notes delivered pursuant to Section 301(18) and designated as an Event of Default shall not constitute an Event of Default hereunder, with respect to the Senior Notes of such series, provided that the following conditions shall have been satisfied:

(a) With reference to this Section 404, the Company has deposited or caused to be irrevocably deposited (except as provided in Section 402(c)) 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 such Senior Notes, (i) in the case of Senior Notes of such series denominated in Dollars, cash in Dollars and/or U.S. Government Obligations, or (ii) in the case of Senior Notes of such series denominated in a Foreign Currency (other than a composite currency), money and/or Foreign Government Obligations, which through the payment of interest and principal in respect thereof in accordance with their terms, will provide (and without reinvestment and assuming no tax liability will be imposed on such Trustee), not later than one day before the due date of any payment of money, an amount in cash, sufficient, in the opinion of a nationally recognized firm of independent public accountants or investment bank expressed in a written certification thereof delivered to the Trustee, to pay and discharge each installment of principal of and interest, if any, on and any mandatory sinking fund payments in respect of all the Senior Notes of such series on the dates such installments of interest or principal and such sinking fund payments are due;

(b) Such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(c) No Event of Default with respect to the Senior Notes of such series shall have occurred and be continuing on the date of such deposit;

(d) The Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of the Senior Notes of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and covenant defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and covenant defeasance had not occurred;

(e) The Company shall have delivered to the Trustee an Officers' Certificate stating the deposit was not made by the Company with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company; and

(f) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the covenant defeasance contemplated by this Section have been complied with.

If the Trustee or any Paying Agent is unable to apply any money or U.S. Government Obligations or Foreign Government Obligations in accordance with Section 401, 402, 403 or 404 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Senior Notes shall be revived and reinstated as though no deposit had occurred until such time as the Trustee or such Paying Agent is permitted to apply all such money or obligations in accordance with such Sections; provided, however, that if the Company has made any payment of principal of or any premium or interest on any Senior Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Senior Notes to receive such payment from the money or obligations held by the Trustee or such Paying Agent.

ARTICLE FIVE

REMEDIES

SECTION 501. EVENTS OF DEFAULT

"Event of Default", wherever used herein with respect to Senior Notes of any series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of any interest on any Senior Note of that series when it becomes due and payable, and continuance of such default for a period of 30 days (unless the entire amount of such payment is deposited by the Company with the Trustee or with a Paying Agent prior to 10:00 a.m., New York City time, on the 30th day of such period); or

(2) default in the payment of the principal of any Senior Note of that series at its Maturity; or

(3) default in the performance or breach of any covenant of the Company in this Indenture (other than defaults pursuant to paragraphs (1) or (2) above or pursuant to a covenant that has been included in this Indenture solely for the benefit of series of Senior Notes other than that series), which default continues uncured for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Senior Notes of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(4) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition by one or more Persons other than the Company seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official for the Company or for any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; or

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

(6) any other Event of Default provided with respect to Senior Notes of that series in the supplemental indenture authorizing such series.

SECTION 502. ACCELERATION OF MATURITY; RESCISSION AND ANNULMENT

If an Event of Default with respect to Senior Notes of any series at the time Outstanding occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Senior Notes of that series may declare the principal amount (or such portion of the principal amount as may be specified in the terms of that series) of all of the Senior Notes of that series, together with any accrued and unpaid interest, if any, thereon, to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified portion thereof), together with accrued and unpaid interest, if any, thereon, shall become immediately due and payable; provided that, if an Event of Default under Section 501(4) or (5) occurs and is continuing, the principal amount (or such specified portion thereof) of all Outstanding Senior Notes, together with accrued and unpaid interest, if any, thereon shall become immediately due and payable without any declaration or other act on the part of the Trustee or the Holders.

At any time after such a declaration of acceleration with respect to Senior Notes of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of not less than a majority in principal amount of the Outstanding Senior Notes of that series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

(1) the Company has paid or deposited with the Trustee a sum sufficient to pay

(A) all overdue interest on all Senior Notes of that series,

(B) the principal of (and premium, if any) any Senior Notes of that series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in such Senior Notes,

(C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Senior Notes, and

(D) all sums paid or advanced by the Trustee and/or the Agents hereunder and the compensation, expenses, disbursements and advances of the Trustee and/or the Agents, (including the reasonable compensation, expenses, disbursements and advances of the their agents and counsel), and any other amounts due to the Trustee and/or the Agents under the Indenture, including, without limitation, under Section 607 hereof; and

(2) all Events of Default with respect to Senior Notes of that series, other than the non-payment of the principal of and interest, if any, on Senior Notes of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 513.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

SECTION 503. COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE

The Company covenants that if an Event of Default occurs under Section 501(1) or (2) with respect to any Senior Notes the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Senior Notes, the whole amount then due and payable on such Senior Notes for principal (and premium, if any) and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal (and premium, if any) and on any overdue interest, at the rate or rates prescribed therefor in such Senior Notes, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the compensation, expenses, disbursements and advances of the Trustee and/or the Agents (including the reasonable compensation, expenses, disbursements and advances of the their agents and counsel), and any other amounts due to the Trustee and/or the Agents under the Indenture, including, without limitation, under Section 607 hereof.

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 Senior Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Senior Notes, wherever situated.

If an Event of Default with respect to Senior Notes 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 Senior Notes 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 504. 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 Senior Notes or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Senior Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(1) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the Senior Notes 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 compensation, expenses, disbursements and advances of the Trustee and/or the Agents, (including the reasonable compensation, expenses, disbursements and advances of the their agents and counsel), and any other amounts due to the Trustee and/or the Agents under the Indenture, including, without limitation, under Section 607 hereof) and of the Holders of Senior Notes allowed in such judicial proceeding, and

(2) 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 of Senior Notes 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 of Senior Notes, to pay to the Trustee any amount due it for the compensation, expenses, disbursements and advances of the Trustee and/or their Agents (including the reasonable compensation, expenses, disbursements and advances of the their agents and counsel), and any other amounts due the Trustee and/or the Agents under the Indenture, including, without limitation, under Section 607 hereof.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Senior Note any plan of reorganization, arrangement, adjustment or composition affecting the Senior Notes or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder of a Senior Note in any such proceeding.

SECTION 505. TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF SENIOR NOTES

All rights of action and claims under this Indenture or the Senior Notes may be prosecuted and enforced by the Trustee without the possession of any of the Senior Notes 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 compensation, expenses, disbursements and advances of the Trustee and/or the Agents (including the reasonable compensation, expenses, disbursements and advances of the their agents and counsel) under the Indenture, be for the ratable benefit of the Holders of the Senior Notes in respect of which such judgment has been recovered.

SECTION 506. APPLICATION OF MONEY COLLECTED

Any money collected by the Trustee pursuant to this Article 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 premium, if any) or interest, upon presentation of the Senior Notes, 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 and payable to the Trustee and/or the Agents under this Indenture (including any reasonable compensation, costs and expenses due and payable to their agents or counsel), including, without limitation, under Section 607 hereof; and

Second: To the payment of the amounts then due and unpaid for principal of (and premium, if any) and interest on the Senior Notes in respect of 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 Senior Notes for principal (and premium, if any) and interest, respectively; and

Third: The balance, if any, to the Company or any other Person or Persons entitled thereto.

The Trustee may fix a record date and payment date for any payment or distribution to Holders pursuant to this Section.

SECTION 507. LIMITATION ON SUITS

No Holder of any Senior Note of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Senior Notes of that series;

(2) the Holders of not less than 25% in principal amount of the Outstanding Senior Notes of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee indemnity and/or security satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity and/or security has failed to institute any such proceeding; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Senior Notes of that series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearance is unduly prejudicial to such Holders) or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

SECTION 508. UNCONDITIONAL RIGHT OF HOLDERS TO RECEIVE PRINCIPAL, PREMIUM AND INTEREST

Notwithstanding any other provision in this Indenture, the Holder of any Senior Notes shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and (subject to Section 305) interest on such Senior Note on the due dates expressed in such Senior Note (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 509. RESTORATION OF RIGHTS AND REMEDIES

If the Trustee or any Holder of a Senior Note 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, the Agents and the Holders of Senior Notes 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 510. RIGHTS AND REMEDIES CUMULATIVE

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Senior Notes in the last paragraph of Section 304, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Senior Notes 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 511. DELAY OR OMISSION NOT WAIVER

No delay or omission of the Trustee or of any Holder of any Senior Note to exercise any right or remedy upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders of Senior Notes may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders of Senior Notes.

SECTION 512. CONTROL BY HOLDERS OF SENIOR NOTES

The Holders of not less than a majority in principal amount of the Outstanding Senior Notes 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 Senior Notes of such series, provided that

the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction; provided, however, that, subject to Section 601, the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, determines that the action so directed may not lawfully be taken, or if the Trustee in good faith shall determine that the proceedings so directed would be illegal, would conflict with this Indenture, would involve it in personal liability or would be unduly prejudicial to the rights of Holders not joining in such direction (it being understood that the Trustee shall have no affirmative duty to ascertain whether or not any such direction is unduly prejudicial to such Holders).

SECTION 513. WAIVER OF PAST DEFAULTS

The Holders of not less than a majority in principal amount of the Outstanding Senior Notes of any series may, on behalf of the Holders of all the Senior Notes of such series, waive any past default hereunder with respect to such series and its consequences, except a default

(1) in the payment of the principal of (or premium, if any) or interest on any Senior Note of such series; provided, however, that the Holders of a majority in principal amount of the Outstanding Senior Notes of any series may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration; or

(2) in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Senior Note of such series affected.

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 514. UNDERTAKING FOR COSTS

All parties to this Indenture agree, and each Holder of any Senior Note 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 Senior Notes of any series, or to any suit instituted by any Holder of any Senior Note for the enforcement of the payment of the principal of (or premium, if any) or interest on any Senior Note on or after the Stated Maturity or Maturities expressed in such Senior Note (or, in the case of redemption, on or after the Redemption Date).

SECTION 515. WAIVER OF STAY OR EXTENSION 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 take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; 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 Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE SIX

THE TRUSTEE

SECTION 601. CERTAIN DUTIES AND RESPONSIBILITIES

(a) Except during the continuance of an Event of Default with respect to Senior Notes of any series,

(1) the Trustee undertakes to perform, with respect to Senior Notes of such series, such duties and only such duties as are specifically set forth in this Indenture, 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, with respect to Senior Notes of such series, 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; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform on their face to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein).

(b) In case an Event of Default with respect to Senior Notes of any series has occurred and is continuing, the Trustee shall exercise, with respect to Senior Notes of such series, such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

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

(1) this Subsection shall not be construed to limit the effect of Subsection (a) of this Section;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved by a court of competent jurisdiction in a final, non-appealable decision that the Trustee was grossly negligent in ascertaining the pertinent facts;

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Senior Notes of any series relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Senior Notes of such series; and

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity and/or security against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

(e) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers or duties hereunder.

SECTION 602. NOTICE OF DEFAULTS

If a default occurs and is continuing with respect to the Senior Notes of any series and if such default is actually known to a Responsible Officer of the Trustee in accordance with the terms hereof, the Trustee shall transmit by mail to all Holders of Senior Notes of such series entitled to receive reports pursuant to Section 313(c) of the Trust Indenture Act within 60 days of the later of (i) the date such default occurs and (ii) the date such Responsible Officer of the Trustee has knowledge of such default, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Senior Note of such series or in the payment of any sinking fund installment with respect to Senior Notes of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors or a Responsible Officer of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders of Senior Notes of such series; and provided, further, that in the case of any default of the character specified in Section 501(3) with respect to Senior Notes of such series, no such notice to Holders shall be given until at least 45 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Senior Notes of such series.

SECTION 603. CERTAIN RIGHTS OF TRUSTEE

Subject to the provisions of Section 601:

(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, bond, debenture, note, other evidence of indebtedness 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 or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and a resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

(d) the Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of Senior Notes of any series pursuant to this Indenture, unless such Holders shall have offered to the Trustee security and/or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, or to inquire as to the performance by the Company of any of its covenants in this Indenture, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney, at the sole cost of the Company, and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

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

(h) the Trustee shall not be charged with knowledge of any default or Event of Default with respect to the Senior Notes of any series for which it is acting as Trustee unless either (1) with respect to Section 501(1) or (2) hereof, a Responsible Officer of the Trustee shall have actual knowledge of such default or Event of Default or (2) written notice of such default or Event of Default shall have been received by a Responsible Officer of the Trustee at the Corporate Trust Office from the Company or any Holder of such Senior Notes, and such notice references the Senior Notes, the Company, and this Indenture;

(i) the Trustee shall not be liable for any action taken, suffered or omitted to be taken 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 Indenture;

(j) the Trustee shall be under no responsibility for the approval by it in good faith of any expert for any of the purposes expressed in this Indenture;

(k) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be compensated, reimbursed and indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder (including as Paying Agent, Security Registrar and custodian of any Global Security), and each agent, custodian and other Person employed to act hereunder;

(l) in no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, epidemics, pandemics, quarantine restrictions, governmental action, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services or other unavailability of the Federal Reserve Bank wire or other wire or communication facility; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances;

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

(n) in no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit), irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(o) the permissive rights or powers of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its gross negligence or willful misconduct in the exercise thereof;

(p) the Trustee shall have the right, but shall not be required, to rely upon and comply with instructions and directions sent by e-mail, facsimile and other similar unsecured electronic methods by persons believed by the Trustee to be authorized to give instructions and directions on behalf of the Company or any other Person; the Trustee shall have no duty or obligation to verify or confirm that the Person who sent such instructions or directions is, in fact, a Person authorized to give instructions or directions on behalf of the Company, and the Trustee shall have no liability for any losses, liabilities, costs or expenses incurred or sustained by the Company as a result of such reliance upon or compliance with such instructions or directions; and the Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including, without limitation, the risk of the Trustee acting on unauthorized instructions and the risk of interception and misuse by third parties;

(q) all notices, approvals, consents, requests and any communications to the Trustee hereunder must be in writing in English and must be in the form of a document that is signed manually or by way of an electronic signature (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other electronic signature provider acceptable to the Trustee); and

(r) the Trustee shall not be responsible for and makes no representation as to the existence, genuineness, value or protection of any collateral, if any, securing the Senior Notes, for the legality, effectiveness or sufficiency of any security document, or for the creation, perfection, priority, sufficiency or protection of any lien, and shall have no duty to prepare, file or record any financing statement, continuation statement or other instrument; and the Trustee shall have no duty to monitor or determine compliance with, and shall have no liability for any withholding or reporting obligations under, applicable tax law, other than with respect to payments made by it as Paying Agent.

SECTION 604. NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SENIOR NOTES

The recitals contained herein and in the Senior Notes (except the Trustee's certificates of authentication) shall be taken as the statements of the Company, and the Trustee or any Authenticating Agent assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Senior Notes. The Trustee or any Authenticating Agent shall not be accountable for the use or application by the Company of Senior Notes or the proceeds thereof or for funds received and disbursed in accordance with this Indenture. The Trustee shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum, prospectus, prospectus supplement or other disclosure material prepared or distributed with respect to the issuance of any series of the Senior Notes.

SECTION 605. MAY HOLD SENIOR NOTES

The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Senior Notes and, subject to Sections 608 and 613, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other agent.

SECTION 606. MONEY HELD IN TRUST

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

SECTION 607. COMPENSATION AND REIMBURSEMENT

The Company agrees

(1) to pay to the Trustee from time to time such compensation for all services rendered by it hereunder as shall be agreed in writing between the Company and the Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in connection with the acceptance or administration of this Indenture, the transactions contemplated hereby, or in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction; and

(3) to indemnify each of the Trustee for, and to hold them harmless against, any loss, damage, claim, liability or expense (including taxes, other than taxes based upon the income of the Trustee) incurred without gross negligence or willful misconduct on their part, as determined by a final, non-appealable judgment of a court of competent jurisdiction, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder and the performance of their duties hereunder, including the costs and expenses (including reasonable fees and disbursements of counsel) of enforcing this Indenture against the Company (including this Section 607) and of defending themselves against any claim (whether asserted by the Company, any Holder or any other Person) or liability in connection with the exercise or performance of any of their powers or duties hereunder.

As security for the performance of the obligations of the Company under this Section the Trustee shall have a lien prior to the Senior Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of, premium, if any, or interest, if any, on particular Senior Notes.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services after the occurrence of an Event of Default specified in Section 501(4) or (5), 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.

The provisions of this Section 607 shall survive the satisfaction and discharge of the Notes, the termination for any reason of this Indenture, and the resignation or removal of the Trustee.

"Trustee" for purposes of this Section 607 shall include the Agents and any predecessor Trustee or Agent, and officers, agents, directors, employees of the Trustee and such Agents.

SECTION 608. DISQUALIFICATION; CONFLICTING INTERESTS

If the Trustee has or shall acquire any conflicting interest, within the meaning of the Trust Indenture Act, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

SECTION 609. CORPORATE TRUSTEE REQUIRED; ELIGIBILITY

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 of America, any State thereof or the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least $50,000,000, subject to supervision or examination by federal or state authority and qualified and eligible under this Article and otherwise permitted by the Trust Indenture Act to act as Trustee under an Indenture qualified under the Trust Indenture Act. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of said 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 surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

SECTION 610. RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 611.

(b) The Trustee may resign at any time with respect to the Senior Notes of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 611 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Senior Notes of such series.

(c) The Trustee may be removed at any time with respect to the Senior Notes of any series by Act of the Holders of a majority in principal amount of the Outstanding Senior Notes of such series delivered to the Trustee and to the Company. If the instrument of acceptance by a successor Trustee required by Section 611 shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the Trustee being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Senior Notes.

(d) If at any time:

(1) the Trustee shall fail to comply with Section 608 after written request therefor by the Company or by any Holder of a Senior Note who has been a Holder of a Senior Note for at least six months, or

(2) the Trustee shall cease to be eligible under Section 609 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, (i) the Company, by a Board Resolution, may remove the Trustee with respect to all Senior Notes, or (ii) subject to Section 514, any Holder of a Senior Note who has been a bona fide Holder of a Senior Note 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 Trustee with respect to all Senior Notes and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Senior Notes of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Senior Notes of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Senior Notes of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Senior Notes of any particular series) and shall comply with the applicable requirements of Section 611. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Senior Notes of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Senior Notes of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 611, become the successor Trustee with respect to the Senior Notes of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Senior Notes of any series shall have been so appointed by the Company or the Holders of Senior Notes and accepted appointment in the manner required by Section 611, any Holder of a Senior Note who has been a bona fide Holder of a Senior Note of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Senior Notes of such series.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Senior Notes of any series and each appointment of a successor Trustee with respect to the Senior Notes of any series by mailing written notice of such event by first-class mail, postage prepaid, to all Holders of such series of Senior Notes as their names and addresses appear in the Security Register.

SECTION 611. ACCEPTANCE OF APPOINTMENT BY SUCCESSOR

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

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

(c) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (a) or (b) of this Section, as the case may be. Any Trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such Trustee or any successor Trustee to secure any amounts then due it pursuant to Section 607.

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

SECTION 612. MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS

Any corporation into which the Trustee 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 Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided 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. In case any Senior Notes 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 Senior Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Senior Notes.

SECTION 613. PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY

If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Senior Notes), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor). For purposes of Section 311(b) (4) and (6) of the Trust Indenture Act:

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

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

SECTION 614. APPOINTMENT OF AUTHENTICATING AGENT

At any time when any of the Senior Notes remain Outstanding the Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Senior Notes that shall be authorized to act on behalf of the Trustee to authenticate Senior Notes of such series issued upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 304, and Senior Notes so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Senior Notes by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by federal or state authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating 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 such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Senior Notes, if any, of the series with respect to which such Authenticating Agent will serve, as their names and addresses appear in the Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section.

The provisions of Sections 306, 603, 604, 605 and 607 shall be applicable to each Authenticating Agent.

If an appointment with respect to one or more series is made pursuant to this Section, the Senior Notes of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternate certificate of authentication in the following form:

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

As Trustee

By: _____
As Authenticating Agent

By: _____
Authorized Signatory

ARTICLE SEVEN

HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

SECTION 701. COMPANY TO FURNISH TRUSTEE NAMES AND ADDRESSES OF HOLDERS

The Company will furnish or cause to be furnished to the Trustee

(a) semi-annually, not later than June 1 and December 1, in each year, a list, in such form as the Trustee may reasonably require, containing all the information in the possession or control of the Company, or any of its Paying Agents other than the Trustee, as to the names and addresses of the Holders of Senior Notes as of the preceding May 15 or November 15, as the case may be, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of the most recent Regular Record Date; excluding from any such list names and addresses received by the Trustee in its capacity as Security Registrar.

SECTION 702. PRESERVATION OF INFORMATION; COMMUNICATIONS TO HOLDERS

(a) The Trustee shall comply with the obligations imposed on it pursuant to Section 312 of the Trust Indenture Act.

(b) Every Holder of Senior Notes, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Senior Notes in accordance with Section 312(b) of the Trust Indenture Act, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

SECTION 703. REPORTS BY TRUSTEE

(a) Within 60 days after May 15 of each year commencing with the first May 15 after the first issuance of Senior Notes pursuant to this Indenture, if required by Section 313(a) of the Trust Indenture Act, the Trustee shall transmit a brief report dated as of such May 15 with respect to any of the events specified in such Section 313(a) that may have occurred since the later of the immediately preceding May 15 and the date of this Indenture.

(b) The Trustee shall transmit the reports required by Section 313(b) of the Trust Indenture Act at the times specified therein.

(c) Reports pursuant to this Section shall be transmitted in the manner and to the Persons required by Sections 313(c) and (d) of the Trust Indenture Act.

SECTION 704. REPORTS BY COMPANY

The Company, pursuant to Section 314(a) of the Trust Indenture Act, shall:

(1) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) that the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934, as amended, in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations;

(3) transmit, within 30 days after the filing thereof with the Trustee, to the Holders of Senior Notes, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (1) and (2) of this Section 704 as may be required by rules and regulations prescribed from time to time by the Commission; and

(4) notify the Trustee when and as the Senior Notes of any series become admitted to trading on any national securities exchange.

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 actual or 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 Officers' Certificates). The Trustee shall have no obligation to monitor or confirm, on a continuing basis or otherwise, the Company's compliance with its covenants or with respect to any reports or other documents filed with the Commission or the Trustee. The Company shall be deemed to have complied with paragraphs (1), (2) and (3) of this Section 704 to the extent such information, documents and reports are filed with the Commission via EDGAR (or any successor electronic delivery procedure).

ARTICLE EIGHT

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 801. COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS

The Company shall not consolidate with or merge into any other corporation or convey, transfer or lease its properties and assets substantially as an entirety to any Person, unless

(1) in case the Company shall consolidate with or merge into another corporation or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the corporation formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by a supplemental indenture hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of (and premium, if any) and interest on all the Senior Notes and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

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

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease complies with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Notwithstanding the above, any Subsidiary of the Company may consolidate with, merge into or transfer all or part of its properties to the Company. Neither an Officers' Certificate nor an Opinion of Counsel shall be required to be delivered in connection therewith.

SECTION 802. SUCCESSOR CORPORATION SUBSTITUTED

Upon any consolidation by the Company with or merger by the Company into any corporation or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety in accordance with Section 801, the successor corporation formed by such consolidation or into which the Company is merged or to which such 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 corporation had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Senior Notes.

ARTICLE NINE

SUPPLEMENTAL INDENTURES

SECTION 901. SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF HOLDERS

Without the consent of any Holders of Senior Notes, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more supplemental indentures hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another corporation to the Company and the assumption by any such successor of the covenants of the Company herein and in the Senior Notes or otherwise to comply with Section 801; or

(2) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Senior Notes 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 trusts hereunder by more than one Trustee, pursuant to the requirements of Section 611(b); or

(3) to add to the covenants of the Company for the benefit of the Holders of all or any series of Senior Notes (and if such covenants are to be for the benefit of less than all series of Senior Notes, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company; or

(4) to add any additional Events of Default; or

(5) to add to or change any of the provisions of this Indenture, to change or eliminate any restrictions on the payment of principal (or premium, if any) on Senior Notes or to permit the issuance of Senior Notes in uncertificated form, provided any such action shall not adversely affect the interests of the Holders of Senior Notes of any series in any material respect (as determined by the Company in good faith); or

(6) to change or eliminate any of the provisions of this Indenture with respect to any series of Senior Notes theretofore unissued; or

(7) to add guarantees with respect to or to secure the Senior Notes; or

(8) to provide for the issuance of and establish the form or terms of Senior Notes of any series as permitted by Sections 201 and 301; or

(9) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make provisions with respect to matters or questions arising under this Indenture, provided such action shall not adversely affect the interests of the Holders of Senior Notes of any series in any material respect (as determined by the Company in good faith); or

(10) to comply with the applicable procedures of the Depositary; or

(11) to conform any supplemental indenture establishing the terms of Senior Notes of any series to the description of such Senior Notes in the prospectus supplement or other offering document with respect to such series (as determined by the Company in good faith); or

(12) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualification of this Indenture under the Trust Indenture Act or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly required by the Trust Indenture Act.

SECTION 902. SUPPLEMENTAL INDENTURES WITH CONSENT OF HOLDERS

With the consent of the Holders of not less than a majority in principal amount of the Outstanding Senior Notes of each series affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into one or more supplemental indentures hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Senior Notes of such series under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Senior Note affected thereby,

(1) reduce the principal amount of the Outstanding Senior Notes of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or

(2) reduce the rate of or extend the time for payment of interest (including default interest) on any Senior Note, or

(3) reduce the principal or change the Stated Maturity of any Senior Note or reduce the amount of, or postpone the date fixed for, the payment of any sinking fund or analogous obligation, or

(4) waive an Event of Default in the payment of the principal of or interest, if any, on any Senior Note (except a rescission of acceleration of the Senior Notes of any series by the Holders of at least a majority in principal amount of the Outstanding Senior Notes of such series and a waiver of the payment default that resulted from such acceleration), or

(5) make the principal of or interest, if any, on any Senior Note payable in any currency other than that stated in the Senior Note, or

(6) modify any of the provisions of this Section 902, Section 508, Section 513 or Section 1006; provided, however, that this clause shall not be deemed to require the consent of any Holder of a Senior Note with respect to changes in the references to “the Trustee” and concomitant changes in this Section and Section 1006, or the deletion of this proviso, in accordance with the requirements of Sections 611(b) and 901(8), or

(7) waive a redemption payment with respect to any Senior Note, provided that such redemption is made at the Company's option.

Except as provided in Section 513, the Holders of at least a majority in principal amount of the Outstanding Senior Notes of any series by written notice to the Trustee (including consents obtained in connection with a tender offer or exchange offer for the Senior Notes of such series) may waive compliance by the Company with any provision of this Indenture or the Senior Notes with respect to such series.

SECTION 903. GENERAL PROVISIONS REGARDING SUPPLEMENTAL INDENTURE

(a) A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Senior Notes, or which modifies the rights of the Holders of Senior Notes of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Senior Notes of any other series.

(b) It shall not be necessary for any Act of Holders of Senior Notes under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act or action shall approve the substance thereof.

SECTION 904. EXECUTION OF SUPPLEMENTAL INDENTURES

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, that all conditions precedent thereto have been complied with and, with respect to the Opinion of Counsel, that such supplemental indenture constitutes the valid and binding obligation of the Company enforceable in accordance with its terms. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, indemnities, protections, duties, immunities or liabilities under this Indenture or otherwise.

SECTION 905. EFFECT OF SUPPLEMENTAL INDENTURES

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Senior Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

SECTION 906. CONFORMITY WITH TRUST INDENTURE ACT

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act.

SECTION 907. REFERENCE IN SENIOR NOTES TO SUPPLEMENTAL INDENTURES

Senior Notes of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Senior Notes of any series so modified as to conform, in the opinion of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Senior Notes of such series.

ARTICLE TEN

COVENANTS

SECTION 1001. PAYMENT OF PRINCIPAL AND INTEREST

The Company covenants and agrees for the benefit of each series of Senior Notes that it will duly and punctually pay the principal of (and premium, if any) and interest on the Senior Notes of that series in accordance with the terms of the Senior Notes and this Indenture.

SECTION 1002. MAINTENANCE OF OFFICE OR AGENCY

The Company or its Affiliate will maintain an office or agency where Senior Notes of each series may be presented or surrendered for payment, where Senior Notes of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Senior Notes of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency in respect of any series of Senior Notes or shall fail to furnish the Trustee with the address thereof, such presentations and surrenders of Senior Notes of that series may be made and notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive such respective presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Senior Notes of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

SECTION 1003. MONEY FOR SENIOR NOTES PAYMENTS TO BE HELD IN TRUST

If the Company or one of its Affiliates shall at any time act as its own Paying Agent with respect to any series of Senior Notes, it will, on or before each due date of the principal of (and premium, if any) or interest on any of the Senior Notes of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee in writing of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Senior Notes, it will, prior to each due date of the principal of (and premium, if any) or interest on any Senior Notes of that series, deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of its action or failure so to act.

The Company will cause each Paying Agent for any series of Senior Notes other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(1) hold all sums held by it for the payment of the principal of (and premium, if any) or interest on Senior Notes of that series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Senior Notes of that series) in the making of any payment of principal of (and premium, if any) or interest on the Senior Notes of that series; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (and premium, if any) or interest on any Senior Note of any series and remaining unclaimed for two years after such principal (and premium, if any) or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Senior Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper of general circulation in New York City notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 1004. CORPORATE EXISTENCE

Subject to Article Eight, 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 the rights (charter and statutory) and franchises of the Company; provided, however, that the Company shall not be required to preserve any such right or franchise if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company, and that the loss thereof is not disadvantageous in any material respect to the Holders.

SECTION 1005. STATEMENT AS TO COMPLIANCE

(a) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year (which fiscal year ends December 31), a written statement, which need not comply with Section 102, signed by the principal executive officer, the principal financial officer or the principal accounting officer of the Company, as to his or her knowledge of the Company's compliance with all conditions and covenants under this Indenture. For purposes of this Section 1005, such compliance shall be determined without regard to any period of grace or requirement of notice under this Indenture.

(b) The Company shall deliver to the Trustee, within five days after the occurrence thereof, written notice of any event which after notice or lapse of time or both would become an Event of Default pursuant to Section 501.

SECTION 1006. WAIVER OF CERTAIN COVENANTS

The Company may omit in any particular instance to comply with any term, provision or condition set forth in Section 1004 with respect to the Senior Notes of any series if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Senior Notes of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

ARTICLE ELEVEN

REDEMPTION OF SENIOR NOTES

SECTION 1101. APPLICABILITY OF ARTICLE

Senior Notes of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 301 for Senior Notes of any series) in accordance with this Article.

SECTION 1102. ELECTION TO REDEEM; NOTICE TO TRUSTEE

In case of any redemption at the election of the Company of all of the Senior Notes of any series, the Company shall, at least 30 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date. In case of any redemption at the election of the Company of less than all the Senior Notes of any series, the Company shall, at least 30 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date and of the principal amount of Senior Notes of such series to be redeemed. In the case of any redemption of Senior Notes (i) prior to the expiration of any restriction on such redemption provided in the terms of such Senior Notes or elsewhere in this Indenture, or (ii) pursuant to an election of the Company which is subject to a condition specified in the terms of such Senior Notes, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction or condition.

SECTION 1103. SELECTION BY TRUSTEE OF SENIOR NOTES TO BE REDEEMED

If the Senior Notes are registered in the name of only one Holder, any partial redemptions shall be pro rata, by lot or other such method as the Trustee shall deem fair and appropriate; provided that, in the case of any such Holder which is a Depositary or a nominee thereof, nothing in this sentence shall affect the right of such Depositary to select for redemption the positions held by its participants in accordance with the procedures of such Depositary. If the Senior Notes are held in definitive form by more than one Holder and if less than all the Senior Notes of any series are to be redeemed, the particular Senior Notes to be redeemed shall be selected not more than 30 days prior to the Redemption Date by the Trustee, from the Outstanding Senior Notes of such series not previously called for redemption, pro rata, by lot or other such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Senior Notes of that series or any integral multiple thereof) of the principal amount of Senior Notes of such series of a denomination larger than the minimum authorized denomination for Senior Notes of that series.

The Trustee shall promptly notify the Company in writing of the Senior Notes selected for redemption and, in the case of any Senior Notes selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Senior Notes shall relate, in the case of any Senior Notes redeemed or to be redeemed only in part, to the portion of the principal amount of such Senior Notes which has been or is to be redeemed.

SECTION 1104. NOTICE OF REDEMPTION

Unless otherwise indicated in the supplemental indenture relating to any series of Senior Notes, notice of redemption shall be given in the manner provided in Section 106 to the Holders of Senior Notes to be redeemed not less than 10 nor more than 60 days prior to the Redemption Date.

All notices of redemption shall state:

(1) the Redemption Date,

(2) the Redemption Price (or if not then ascertainable, the manner of calculation thereof),

(3) if less than all the Outstanding Senior Notes of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amounts) of the particular Senior Notes to be redeemed,

(4) that on the Redemption Date the Redemption Price will become due and payable upon each such Senior Note to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date,

(5) the place or places where such Senior Notes are to be surrendered for payment of the Redemption Price, and

(6) that the redemption is for a sinking fund, if such is the case.

Notice of redemption of Senior Notes to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company; provided, however, that the Company shall have delivered to the Trustee, at least five Business Days prior to the date such notice is to be given (unless a shorter period shall be satisfactory to the Trustee), an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated therein. Any notice of redemption may, at the Company's discretion, be subject to one or more conditions precedent; if any such condition precedent has not been satisfied, the Company shall provide written notice to the Trustee prior to the Redemption Date, whereupon the notice of redemption shall be rescinded, and the Trustee shall promptly send a copy of such notice to the Holders.

SECTION 1105. DEPOSIT OF REDEMPTION PRICE

Except as otherwise provided in a supplemental indenture pursuant to Section 301, on or prior to the Business Day prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company or its Affiliate is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money sufficient to pay the Redemption Price of and accrued interest, if any, on all the Senior Notes which are to be redeemed on that date.

SECTION 1106. SENIOR NOTES PAYABLE ON REDEMPTION DATE

Notice of redemption having been given as aforesaid, the Senior Notes so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified together with any accrued interest thereon, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Senior Notes shall cease to bear interest. Upon surrender of any such Senior Note for redemption in accordance with such notice, such Senior Note shall be paid by the Company at the Redemption Price, together with accrued interest, if any, to the Redemption Date; provided, however, that, except as otherwise provided in a supplemental indenture pursuant to Section 301, installments of interest on Senior Notes whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Senior Notes, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 305.

If any Senior Note called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Senior Note.

SECTION 1107. SENIOR NOTES REDEEMED IN PART

Any Senior Note that is to be redeemed only in part shall be surrendered at an office or agency of the Company therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and upon receipt of a Company request for authentication and delivery, the Trustee shall authenticate and deliver to the Holder of such Senior Note without service charge, a new Senior Note of the same series, Stated Maturity and original issue date of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Senior Note so surrendered.

ARTICLE TWELVE

SINKING FUNDS

SECTION 1201. APPLICABILITY OF ARTICLE

The provisions of this Article shall be applicable to any sinking fund for the retirement of Senior Notes of a series except as otherwise specified as contemplated by Section 301 for Senior Notes of such series.

The minimum amount of any sinking fund payment provided for by the terms of Senior Notes of any series is herein referred to as a “mandatory sinking fund payment”, and any payment in excess of such minimum amount provided for by the terms of Senior Notes of any series is herein referred to as an “optional sinking fund payment”. If provided for by the terms of Senior Notes of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 1202. Each sinking fund payment shall be applied to the redemption of Senior Notes of any series as provided for by the terms of Senior Notes of such series.

SECTION 1202. SATISFACTION OF SINKING FUND PAYMENTS WITH SENIOR NOTES

The Company (1) may deliver Outstanding Senior Notes of a series (other than any previously called for redemption), and (2) may apply as a credit Senior Notes of a series which have been redeemed either at the election of the Company pursuant to the terms of such Senior Notes or through the application of permitted optional sinking fund payments pursuant to the terms of such Senior Notes, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Senior Notes of such series required to be made pursuant to the terms of such Senior Notes as provided for by the terms of such series; provided that such Senior Notes have not been previously so credited. Such Senior Notes shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Senior Notes for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

SECTION 1203. REDEMPTION OF SENIOR NOTES FOR SINKING FUND

Not less than 60 days prior to each sinking fund payment date for any series of Senior Notes, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Senior Notes of that series pursuant to Section 1202 and stating the basis for such credit and that such Senior Notes have not previously been so credited and will also deliver to the Trustee any Senior Notes to be so delivered. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Senior Notes to be redeemed upon such sinking fund payment date in the manner specified in Section 1103 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 1104. Such notice having been duly given, the redemption of such Senior Notes shall be made upon the terms and in the manner stated in Sections 1106 and 1107.

ARTICLE THIRTEEN

MISCELLANEOUS PROVISIONS

SECTION 1301. NO RECOURSE AGAINST OTHERS

An incorporator or any past, present or future director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Senior Notes or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Senior Note, each Holder shall waive and release all such liability. Such waiver and release shall be part of the consideration for the issue of the Senior Notes.

SECTION 1302. ASSIGNMENT; BINDING EFFECT

The Company shall have the right at all times to assign any of its rights or obligations under this Indenture to a direct or indirect wholly-owned Subsidiary of the Company, provided that, in the event of any such assignment, the Company shall remain primarily liable for the performance of all such obligations. This Indenture may also be assigned by the Company in connection with a transaction described in Article Eight. This Indenture shall be binding upon and inure to the benefit of the Company, the Trustee, the Holders, any Security Registrar, Paying Agent, and Authenticating Agent and their respective successors and assigns.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile, PDF or other electronic transmission (including any electronic signature complying with the U.S. federal ESIGN Act of 2000 or the New York Electronic Signatures and Records Act) shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes, and signatures so transmitted shall be deemed to be original signatures for all purposes.

SECTION 1303. USA PATRIOT ACT

The parties hereto acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act), all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Indenture agree that they will provide to the Trustee such information as it may request, from time to time, in order for the Trustee to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account, and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

SECTION 1304. WAIVER OF JURY TRIAL

EACH OF THE COMPANY, THE TRUSTEE AND, BY ITS ACCEPTANCE OF A SENIOR NOTE, EACH HOLDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SENIOR NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

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

H2O AMERICA

By: /s/ Ann P. Kelly
Name: Ann P. Kelly
Title: Chief Financial Officer and Treasurer

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Laurel Casasanta
Name: Laurel Casasanta
Title: Vice President

EXHIBIT 4.2

H2O AMERICA

TO

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
TRUSTEE

FIRST SUPPLEMENTAL INDENTURE

DATED AS OF NOVEMBER 3, 2026

Establishing a series of Senior Notes designated as

REMARKETABLE SENIOR NOTES DUE 2031

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[1] This Table of Contents does not constitute part of the Indenture or have any bearing upon the interpretation of any of its terms and provisions.

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THIS FIRST SUPPLEMENTAL INDENTURE is made as of the 3rd day of November, 2026, by and between H2O AMERICA, a Delaware corporation (the "Company"), and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association (the "Trustee").

W I T N E S S E T H:

WHEREAS, the Company has heretofore entered into a Senior Note Indenture, dated as of November 3, 2026 (the "Original Indenture"), with U.S. Bank Trust Company, National Association;

WHEREAS, the Original Indenture is incorporated herein by this reference and the Original Indenture, as heretofore supplemented and amended and as further supplemented by this First Supplemental Indenture, is herein called the "Indenture";

WHEREAS, under the Original Indenture, a new series of Senior Notes may at any time be established pursuant to a supplemental indenture executed by the Company and the Trustee;

WHEREAS, the Company proposes to create under the Indenture a new series of Senior Notes to be designated "Remarketable Senior Notes due 2031" (the "Remarketable Senior Notes");

WHEREAS, additional Senior Notes of other series hereafter established, except as may be limited in the Original Indenture as at the time supplemented and modified, may be issued from time to time pursuant to the Indenture as at the time supplemented and modified; and

WHEREAS, the Company has requested that the Trustee execute and deliver this First Supplemental Indenture, and all conditions necessary to authorize the execution and delivery of this First Supplemental Indenture and to make it a valid and binding obligation of the Company, and to make the Remarketable Senior Notes, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company, have been done or performed.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1

DEFINITIONS

Section 101. Definition of Terms. For all purposes of this First Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the capitalized terms not otherwise defined herein shall have the meanings set forth in the Original Indenture or, if not defined in the Original Indenture, in the Purchase Contract and Pledge Agreement;

(b) the definition of any term in this First Supplemental Indenture that is also defined in the Original Indenture shall supersede the definition of such term in the Original Indenture;

(c) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(d) all other terms used herein which are defined in the Trust Indenture Act of 1939, as amended, whether directly or by reference therein, have the meanings assigned to them therein;

(e) a reference to a Section or Article is to a Section or Article of this First Supplemental Indenture unless otherwise stated;

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

(g) headings are for convenience of reference only and do not affect interpretation;

"Applicable Law" shall have the meaning set forth in Section 1002.

"Business Day" means any day that is not (i) a Saturday or Sunday, (ii) a day on which banking institutions in New York City or St. Paul, Minnesota are authorized or required by law or executive order to close or (iii) a day on which the Trustee's Corporate Trust Office is closed for business. The definition of "Business Day" in Section 101 of the Original Indenture shall not apply with respect to the Remarketable Senior Notes, and any reference in the Original Indenture to such provision shall, for purposes of the Remarketable Senior Notes, be deemed to refer instead to the definition of "Business Day" set forth herein.

"Code" shall have the meaning set forth in Section 1002.

"Global Note" shall have the meaning set forth in Section 204.

"Holder" means (i) with respect to the Corporate Units or the Treasury Units, such term as defined in the Purchase Contract and Pledge Agreement and (ii) with respect to the Remarketable Senior Notes, the Person in whose name at the time a particular Remarketable Senior Note is registered on the books of the Trustee kept for that purpose.

"Increased Principal Amount" shall have the meaning set forth in Section 209.

"Interest Payment" means, with respect to any Interest Payment Date, the interest payment on the Remarketable Senior Notes due on such Interest Payment Date.

"Interest Payment Date" shall have the meaning set forth in Section 205.

"Interest Period" means, with respect to any Interest Payment Date, the period from and including the immediately preceding Interest Payment Date (or if none, the Original Issue Date) to, but excluding, such Interest Payment Date.

"Original Issue Date" means November 3, 2026.

"Pledged Note" shall have the meaning set forth in Section 209.

"Purchase Contract and Pledge Agreement" means the Purchase Contract and Pledge Agreement, dated as of November 3, 2026, between the Company and U.S. Bank Trust Company, National Association, as purchase contract agent, collateral agent, custodial agent and securities intermediary, as amended from time to time.

"Put Price" shall have the meaning set forth in Section 905.

"Put Right" shall have the meaning set forth in Section 905.

"Put Right Default" shall have the meaning set forth in Section 206.

"Reduced Principal Amount" shall have the meaning set forth in Section 209.

"Regular Record Date" means, with respect to any Interest Payment Date for the Remarketable Senior Notes, the 15th day of the calendar month immediately preceding the calendar month in which the applicable Interest Payment Date falls (whether or not a Business Day); provided that if any of the Remarketable Senior Notes or the Corporate Units are held by a securities depository in book-entry form, the Regular Record Date for such Remarketable Senior Notes will be the close of business on the Business Day immediately preceding the applicable Interest Payment Date.

"Released Note" shall have the meaning set forth in Section 209.

"Remarketed Notes" means, with respect to all Remarketings during any Applicable Remarketing Period, the aggregate principal amount of Remarketable Senior Notes underlying the Pledged Applicable Ownership Interests in Notes and the Separate Notes, if any, subject to Remarketing as identified to the Remarketing Agent by the Purchase Contract Agent and the Custodial Agent, respectively, in each case pursuant to the terms of the Purchase Contract and Pledge Agreement.

"Remarketing Agent" means the remarketing agent or agents appointed by the Company, pursuant to the Remarketing Agreement.

"Securities Rate" shall have the meaning set forth in Section 205.

"Stated Maturity" shall have the meaning set forth in Section 202.

"Subjected Note" shall have the meaning set forth in Section 209.

"Underwriting Agreement" means the Underwriting Agreement, dated October 29, 2026, among the Company and the underwriters named therein, for whom Wells Fargo Securities, LLC and J.P. Morgan Securities LLC are acting as representatives (collectively, the "Underwriters"), for the sale of 6,500,000 of the Company's Corporate Units (and up to 975,000 additional Corporate Units upon exercise of the Underwriters' over-allotment option).

The terms "Company," "Indenture," "Original Indenture," "Trustee" and "Remarketable Senior Notes" shall have the respective meanings set forth in the recitals to this First Supplemental Indenture.

ARTICLE 2

GENERAL TERMS AND CONDITIONS OF THE REMARKETABLE SENIOR NOTES

Section 201. Designation and Principal Amount. There is hereby established a new series of Senior Notes to be issued under the Indenture, to be designated as the Company's Remarketable Senior Notes due 2031 (the "Remarketable Senior Notes") and limited in aggregate principal amount to $373,750,000, except as contemplated in Section 301(2) of the Original Indenture.

Section 202. Stated Maturity. The "Stated Maturity" of the Remarketable Senior Notes is November 1, 2031.

Section 203. Form of Payment; Minimum Transfer Restriction.

(a) Except as provided in Section 204, the Remarketable Senior Notes shall be issued in fully registered definitive form without coupons. All Remarketable Senior Notes shall have identical terms. Remarketable Senior Notes corresponding to Applicable Ownership Interests in Notes that are components of Corporate Units shall be registered in the name of the Purchase Contract Agent. Principal of the Remarketable Senior Notes will be payable (subject to the last sentence of this Section 203(a)), the transfer of such Remarketable Senior Notes will be registrable, and such Remarketable Senior Notes will be exchangeable for Remarketable Senior Notes of a like aggregate principal amount bearing identical terms and provisions, at the Corporate Trust Office of the Trustee; provided, however, that, except as otherwise provided in the form of Remarketable Senior Note attached hereto as Exhibit A, payment of interest will be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or, if such Person so requests and designates an account in writing to the Trustee at least five Business Days prior to the relevant Interest Payment Date, by wire transfer to such account, and provided, further, that the Company, in its discretion may remove the Paying Agent and may appoint one or more additional Paying Agents (including the Company or any of its affiliates). Payments with respect to any Global Note or any Remarketable Senior Note corresponding to Applicable Ownership Interests in Notes that are components of Corporate Units will be made by wire transfer to the Depository or in accordance with any other applicable procedures of the Depository.

(b) The Remarketable Senior Notes shall be issuable in minimum denominations of $1,000 and integral multiples of $1,000 in excess thereof; provided, however, that upon the release by the Collateral Agent of Remarketable Senior Notes underlying the Pledged Applicable Ownership Interests in Notes in accordance with Section 3.15 of the Purchase Contract and Pledge Agreement, if any Holder or Beneficial Owner shall be entitled to receive Remarketable Senior Notes in an aggregate principal amount that is not an integral multiple of $1,000, the Purchase Contract Agent shall request, on behalf of such Holder or Beneficial Owner, that the Company issue Remarketable Senior Notes in denominations of $50, or integral multiples thereof, in exchange for Remarketable Senior Notes in denominations of $1,000 or integral multiples thereof. The second paragraph of Section 201 of the Original Indenture shall not apply with respect to the Remarketable Senior Notes, and any reference in the Original Indenture to such provision shall, for purposes of the Remarketable Senior Notes, be deemed to refer instead to this Section 203(b).

Section 204. Exchange and Registration of Transfer of Remarketable Senior Notes; Restrictions on Transfer; Depositary. Remarketable Senior Notes corresponding to Applicable Ownership Interests in Notes that are no longer a component of the Corporate Units and are released from the Collateral Account will be initially issued in permanent global form (a "Global Note"), and if issued as one or more Global Notes, the Depository shall be The Depository Trust Company or such other depository that is a clearing agency registered under Section 17A of the Exchange Act as any officer of the Company may from time to time designate. On the date on which the Remarketable Senior Notes registered in the name of the Purchase Contract Agent pursuant to Section 203 are issued, the Company shall also issue one or more Global Notes, registered in the name of the Depository or its nominee, each having a zero principal balance. Upon the creation of Treasury Units, or the re-creation of Corporate Units or in any other case where the Collateral Agent releases Remarketable Senior Notes underlying the Pledged Applicable Ownership Interests in Notes, an appropriate annotation shall be made by the Collateral Agent on the Pledged Note held by the Securities Intermediary and credited to the Collateral Account and, upon receipt of the confirmation and instructions contemplated by Section 209, by the Trustee on the Schedule of Increases or Decreases in Remarketable Senior Notes on the Global Notes held by or on behalf of the Depository. Except upon recreation of Corporate Units, Remarketable Senior Notes represented by the Global Notes will be exchangeable for Remarketable Senior Notes in certificated form only (x) if the Depository (A) has notified the Company that it is unwilling or unable to continue as depository for the Global Notes or (B) has ceased to be a "clearing agency" registered under the Exchange Act and, in either case, a successor depository that is a clearing agency registered under Section 17A of the Exchange Act is not appointed by the Company within 90 days after such notice or cessation, or (y) upon the occurrence and during the continuance of Event of Default or any other event that after notice or lapse of time, would constitute an Event of Default with respect to the Remarketable Senior Notes and any beneficial owner of a Global Note requests that its beneficial interest be exchanged for a Remarketable Senior Note in certificated form; provided, subject to Section 203, that the Remarketable Senior Notes in certificated form so issued in exchange for the Global Notes shall be in denominations of $1,000 or any whole multiple of $1,000 above that amount and shall be of like aggregate principal amount and tenor as the portion of the Global Note to be exchanged. Except as provided above, owners of beneficial interest in a Global Note will not be entitled to receive physical delivery of Remarketable Senior Notes in certificated form and will not be considered the Holders thereof for any purpose under the Indenture. Any Global Note that is exchangeable pursuant to clause (x) of the fourth sentence of this Section 204 shall be exchangeable for Remarketable Senior Notes in certificated form registered in such names as the Depository shall direct. The second sentence of Section 203(c)(1) and Sections 203(c)(2) and 203(c)(3) of the Original Indenture shall not apply with respect to the Remarketable Senior Notes, and any reference in the Original Indenture to such provisions shall, for purposes of the Remarketable Senior Notes, be deemed to refer instead to the fourth sentence of this Section 204. Neither the Trustee nor any agent of the Trustee shall have any responsibility or liability for any actions taken or not taken by the Depository, and the Trustee shall have no obligation to monitor or verify compliance with any restrictions on transfer imposed under the Indenture or applicable law with respect to any transfer of any interest in any Remarketable Senior Note other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of the Indenture.

Section 205. Interest.

(a) Subject to Section 904, interest on the Remarketable Senior Notes shall be payable quarterly in arrears on February 1, May 1, August 1 and November 1 of each year (each, subject to adjustment in accordance with Section 205(b), an "Interest Payment Date"), commencing February 1, 2027, and at Stated Maturity, to the Person in whose name the relevant Remarketable Senior Notes are registered at the close of business on the Regular Record Date for such Interest Payment Date except that interest payable at the Stated Maturity shall be paid to the Person to whom principal is payable. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months, and with respect to any period less than a full calendar month, on the basis of the actual number of days elapsed per 30-day month. If any Interest Payment Date, the Stated Maturity or the date (if any) on which the Company is required to purchase the Remarketable Senior Notes pursuant to Section 905 is not a Business Day, then the applicable payment shall be made on the next succeeding day that is a Business Day and no interest shall accrue or be paid in respect of such delay. Section 113 of the Original Indenture is hereby superseded in its entirety, with respect to the Remarketable Senior Notes, by the immediately preceding sentence.

(b) The Remarketable Senior Notes will bear interest initially at the rate of 5.300% per year (the "Securities Rate") from and including November 3, 2026 to, but excluding, the date the principal amount thereof is paid or made available for payment, or in the event of a Successful Remarketing, the Remarketing Settlement Date. In the event of a Successful Remarketing of the Remarketable Senior Notes, the interest rate applicable to the Remarketable Senior Notes may be reset by the Remarketing Agent to the applicable Reset Rate with effect from the Remarketing Settlement Date, as set forth in Section 903. If the interest rate is so reset, the Remarketable Senior Notes will bear interest at the applicable Reset Rate from, and including, the Remarketing Settlement Date to, but excluding, the date the principal amount thereof is paid or made available for payment. In the event of a Successful Remarketing, following the applicable Remarketing Settlement Date, interest on Remarketable Senior Notes will be payable semi-annually on May 1 and November 1, or if any such date is not a Business Day, on the next following Business Day. If there is no Successful Remarketing, the interest rate will not be reset, the Interest Payment Dates shall remain the same and the Remarketable Senior Notes shall continue to bear interest at the Securities Rate. The Remarketable Senior Notes shall bear interest, to the extent permitted by law, on any overdue principal and interest at the Securities Rate, unless a Successful Remarketing shall have occurred, in which case on and after the Remarketing Settlement Date the Remarketable Senior Notes shall bear interest, to the extent permitted by law, on any overdue principal and interest at the Reset Rate.

Section 206. Events of Default. An Event of Default as defined in the Original Indenture shall be an Event of Default with respect to the Remarketable Senior Notes. In addition, an Event of Default with respect to the Remarketable Senior Notes will occur if the Company fails to pay the Put Price of any Remarketable Senior Note on the Purchase Contract Settlement Date after a Holder's Put Right has been exercised pursuant to Section 905 ("Put Right Default"). For the avoidance of doubt, and without prejudice to any other remedies that may be available to the Trustee or the Holders of the Remarketable Senior Notes, no breach by the Company of any covenant or obligation under the Original Indenture or the terms of the Remarketable Senior Notes shall be an Event of Default except those that are specifically identified as an Event of Default under the Original Indenture (including, for the avoidance of doubt in Section 501(3) of the Original Indenture) or a Put Right Default. The Trustee shall not be deemed to have notice or knowledge of any Put Right Default unless a Responsible Officer of the Trustee shall have received written notice of such Put Right Default at the Corporate Trust Office, and such notice references the Remarketable Senior Notes, the Company and the Indenture.

Section 207. No Defeasance. The provisions of Sections 403 and 404 of the Original Indenture shall not apply to the Remarketable Senior Notes, and the provisions of Section 401 of the Original Indenture shall not apply to the Remarketable Senior Notes to the extent the provisions of Section 401 would allow for satisfaction and discharge of the Remarketable Senior Notes prior to the Stated Maturity, except in the case of an exercise by a Holder of the Put Right pursuant to Section 905 on the Purchase Contract Settlement Date.

Section 208. No Sinking Fund or Repayment at Option of the Holder. The Remarketable Senior Notes shall not be subject to any sinking fund or analogous provision and, except in the case of the Put Right, shall not be repayable at the option of a Holder thereof prior to the Stated Maturity.

Section 209. Increase and Decrease in Pledged Notes. In the event that any Remarketable Senior Notes underlying Pledged Applicable Ownership Interests in Notes with respect to any Corporate Units in global form are to be released from the Pledge following a Termination Event, Collateral Substitution, Cash Settlement, Successful Remarketing, Early Settlement or Fundamental Change Early Settlement pursuant to the Purchase Contract and Pledge Agreement (a "Released Note"), such release and delivery shall be evidenced by an endorsement by the Securities Intermediary, at the direction of the Collateral Agent, on the Remarketable Senior Note held by the Securities Intermediary and credited to the Collateral Account (the "Pledged Note") reflecting a reduction in the principal amount of such Pledged Note equal in amount (the "Reduced Principal Amount") to the principal amount of the Released Note. The Collateral Agent shall confirm any such Reduced Principal Amount by delivering a photocopy of such endorsement made on the Pledged Note evidencing such Reduced Principal Amount to (i) the Trustee at the email address or other address of the Trustee provided for notices to the Trustee in Section 105 of the Original Indenture (or at such other email address or other address as the Trustee shall provide to the Collateral Agent) and (ii) the Company at the facsimile number, email address or other address of the Company for notices to the Company on the signature page of the Purchase Contract and Pledge Agreement (or at such other facsimile number, email address or other address as the Company shall provide to the Collateral Agent). Upon receipt of such confirmation, the Company shall deliver an instruction letter to the Collateral Agent to instruct the Securities Intermediary to deliver the Pledged Note (which will be evidenced by the original definitive note held by the Securities Intermediary) to the Trustee along with an instruction to coordinate the specified decrease in the Pledged Note and the corresponding increase in the Global Note in an amount equal to the Reduced Principal Amount in accordance with the procedures of the Depository, and the Trustee shall make an endorsement on such Global Note to reflect such increase. Except in the case of a release from the Pledge following a Termination Event, the Trustee shall then promptly return the Pledged Notes to the Securities Intermediary for credit to the Collateral Account. Other than the exercise of reasonable care in the handling of the Pledged Notes, neither the Collateral Agent nor the Trustee shall be responsible for perfecting, maintaining, monitoring, preserving or protecting the security interest or lien granted under the Purchase Contract and Pledge Agreement. In the event that a Remarketable Senior Note is transferred to the Securities Intermediary for credit to the Collateral Account pursuant to Section 3.14 of the Purchase Contract and Pledge Agreement (a "Subjected Note") in connection with the re-creation of Corporate Units, such transfer shall be evidenced by an endorsement by the Securities Intermediary, at the direction of the Collateral Agent, on the Pledged Note held by the Securities Intermediary reflecting an increase in the principal amount of such Pledged Note equal in amount (the "Increased Principal Amount") to the principal amount of such Subjected Note. The Collateral Agent shall confirm any such Increased Principal Amount by delivering a photocopy of such endorsement made on the Pledged Note evidencing such Increased Principal Amount to (i) the Trustee at the email address or other address of the Trustee provided for notices to the Trustee in Section 105 of the Original Indenture (or at such other email address or other address as the Trustee shall provide to the Collateral Agent) and (ii) the Company at the facsimile number, email address or other address of the Company for notices to the Company on the signature page of the Purchase Contract and Pledge Agreement (or at such other facsimile number, email address or other address as the Company shall provide to the Collateral Agent). Upon receipt of such confirmation, the Company shall deliver an instruction letter to the Collateral Agent directing the Securities Intermediary to deliver the Pledged Note (which will be evidenced by the original definitive note held by the Securities Intermediary) to the Trustee along with an instruction to coordinate the specified increase in the Pledged Notes and the corresponding decrease in the Global Note in an amount equal to the Increased Principal Amount in accordance with the procedures of the Depository, and the Trustee shall make an endorsement on such Global Note to reflect such decrease. The Trustee shall then promptly return the Pledged Notes to the Securities Intermediary for credit to the Collateral Account.

Each of the Trustee and the Collateral Agent may conclusively rely, without independent investigation or verification, on any confirmation, instruction letter or endorsement delivered pursuant to this Section 209, and shall have no liability for any action taken or omitted in good faith in reliance thereon.

Section 210. No Additional Amounts. The Company will not pay any additional amounts to any Holder in respect of any tax, assessment or governmental charge.

Section 211. Ranking. For the avoidance of doubt, the Remarketable Senior Notes shall rank on a parity with all Senior Notes of other series issued under the Original Indenture.

ARTICLE 3

RESERVED

ARTICLE 4

RESERVED

ARTICLE 5

FORM OF REMARKETABLE SENIOR NOTE

Section 501. Form of Remarketable Senior Note. The Remarketable Senior Notes and the Trustee's Certificate of Authentication to be endorsed thereon are to be substantially in the form attached hereto as Exhibit A. Following a Successful Remarketing pursuant to Article 9, the Remarketable Senior Notes and the Trustee's Certificate of Authentication to be endorsed thereon shall be amended and restated substantially in the form attached hereto as Exhibit B.

ARTICLE 6

ORIGINAL ISSUE OF REMARKETABLE SENIOR NOTES

Section 601. Original Issue of Remarketable Senior Notes. Remarketable Senior Notes in the aggregate principal amount not to exceed $373,750,000 may, from time to time, be executed by the Company and delivered to the Trustee for authentication by it, and the Trustee shall thereupon authenticate and deliver said Remarketable Senior Notes pursuant to a Company Order, without any further corporate action by the Company.

Section 602. Issuance of Amended and Restated Remarketable Senior Notes following a Successful Remarketing. Remarketable Senior Notes in the aggregate principal amount equal to the amount of Remarketable Senior Notes Outstanding at the time of a Successful Remarketing pursuant to Article 9 may be executed by the Company and delivered to the Trustee for authentication by it, and the Trustee shall thereupon authenticate and deliver said Remarketable Senior Notes as amended and restated substantially in the form attached hereto as Exhibit B pursuant to a Company Order, accompanied by an Officers' Certificate setting forth the Reset Rate, the Interest Payment Dates and the aggregate principal amount of Remarketable Senior Notes then Outstanding, without any further corporate action by the Company. Upon the delivery of such amended and restated Remarketable Senior Notes, any Remarketable Senior Notes then Outstanding in the form attached hereto as Exhibit A shall be cancelled by the Trustee. The Trustee may conclusively rely on such Company Order and Officers' Certificate and shall have no responsibility for the determination of any of the terms set forth therein.

ARTICLE 7

RESERVED

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 801. Supplemental Indentures without Consent of Holders of Remarketable Senior Notes. In addition to subsections (1) through (12) of Section 901 of the Original Indenture, without the consent of any Holder of a Remarketable Senior Note, the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto to amend the Remarketable Senior Notes, the Original Indenture (insofar as it relates to the Remarketable Senior Notes) and this First Supplemental Indenture, in form satisfactory to the Trustee (which shall comply with the Trust Indenture Act then in effect), for any one or more of the following purposes:

(a) following the Purchase Contract Settlement Date, to such extent as shall be necessary to permit or facilitate the satisfaction and discharge of the Remarketable Senior Notes pursuant to Section 401 of the Original Indenture, provided that any such action shall not adversely affect the interests of any Holder in any material respect;

(b) to make any modifications to the Remarketable Senior Notes permitted pursuant to Section 904 in connection with a Remarketing that is made in accordance with the terms of the Indenture;

(c) to conform the provisions thereof or hereof to the descriptions thereof or hereof contained in the preliminary prospectus supplement dated October 29, 2026 for the Remarketable Senior Notes, as supplemented by any free writing prospectus used in connection with the offering of the Equity Units, under the sections entitled "Description of the Equity Units," "Description of the Purchase Contracts," "Certain Provisions of the Purchase Contract and Pledge Agreement" and "Description of the Remarketable Senior Notes" (in each case, as determined by the Company in good faith).

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer, mortgage, pledge or assignment of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects the Trustee's own rights, indemnities, duties, liabilities or immunities under the Indenture or otherwise. In executing any supplemental indenture pursuant to this Section 801, including any supplemental indenture entered into pursuant to clause (c) above, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by the Indenture and that all conditions precedent thereto have been satisfied, and the Trustee shall have no responsibility for determining whether any such supplemental indenture conforms to the descriptions referred to in clause (c) above.

Any supplemental indenture authorized by the provisions of this Section 801 may be executed by the Company and the Trustee without the consent of the Holders of any of the Remarketable Senior Notes at the time Outstanding, notwithstanding any of the provisions of Section 902 of the Original Indenture.

Section 901 of the Original Indenture shall apply, as amended, with respect to the Remarketable Senior Notes, and any reference in the Original Indenture to such provision shall, for purposes of the Remarketable Senior Notes, be deemed to refer to such provision as amended by this Section 801.

Section 802. Supplemental Indentures with Consent of Holders of Remarketable Senior Notes. With the consent of the Holders of not less than a majority in the principal amount of Remarketable Senior Notes then Outstanding (except as otherwise provided in Section 902 of the Original Indenture), the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto or to the Original Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Original Indenture or this First Supplemental Indenture or of modifying in any manner the rights of the Holders of the Remarketable Senior Notes; provided, however, that, in addition to the restrictions set forth in the proviso contained in Section 902 of the Original Indenture (which shall apply to this Section 802, *mutatis mutandis*), no supplemental indenture may without the consent of the Holders of each Outstanding Remarketable Senior Note directly affected thereby: (i) modify the Put Right of the Holders of the Remarketable Senior Notes upon a Failed Remarketing in a manner materially adverse to the rights of the Holders (as determined by the Company in good faith), (ii) modify the Remarketing provisions of the Remarketable Senior Notes in a manner materially adverse to the rights of the Holders (as determined by the Company in good faith) or (iii) modify Section 211 hereof in a manner materially adverse to the rights of the Holders (as determined by the Company in good faith), it being understood that any modification of the terms of the Remarketable Senior Notes permitted pursuant to Section 904 in connection with a Remarketing that is made in accordance with the terms of the Indenture may be made without the consent of any Holders of the Remarketable Senior Notes. Section 902 of the Original Indenture shall apply, as amended, with respect to the Remarketable Senior Notes, and any reference in the Original Indenture to such provision shall, for purposes of the Remarketable Senior Notes, be deemed to refer to such provision as supplemented by this Section 802.

ARTICLE 9

REMARKETING

Section 901. Remarketing Procedures.

(a) In the case of an Optional Remarketing, unless a Termination Event has occurred prior to the Applicable Remarketing Period, or in the case of a Final Remarketing, unless a Successful Optional Remarketing or Termination Event has occurred prior to the Final Remarketing Period, the Company shall engage the Remarketing Agent pursuant to the Remarketing Agreement for the Remarketing of the Remarketable Senior Notes as set forth under Section 902. The Company shall, no later than (i) in the case of an Optional Remarketing, five Business Days prior to the first day of the Applicable Remarketing Period or (ii) in the case of a Final Remarketing, seven days prior to the first day of the Final Remarketing Period, request that the Depository or its nominee notify the Beneficial Owners or Depository Participants holding Separate Notes, Corporate Units and Treasury Units, and shall provide a copy of such request to the Trustee, the Collateral Agent and the Purchase Contract Agent, in the case of an Optional Remarketing, of the Company's intent to attempt an Optional Remarketing in the Applicable Remarketing Period, and in all cases, of the proposed Remarketing Dates and the procedures to be followed in each Remarketing, including the procedures to be followed by Holders of Separate Notes to participate in a Remarketing, the applicable procedures for Holders of Corporate Units to create Treasury Units or Holders of Treasury Units to recreate Corporate Units, as the case may be, the applicable procedures for Holders of Corporate Units to effect an Early Settlement and, in the case of a Final Remarketing, applicable procedures to effect a Cash Settlement and the applicable procedures that must be followed by a Holder of Separate Notes if such Holder wishes to exercise its Put Right or by a Holder of Corporate Units if such Holder elects not to exercise its Put Right.

(b) At any time after notice is given by the Company in accordance with Section 901(a), other than during a Blackout Period, each Holder of Separate Notes may elect to have Separate Notes held by such Holder remarketed in the applicable Remarketing for which such notice was given. A Holder making such an election must notify the Custodial Agent and deliver such Separate Notes to the Custodial Agent in accordance with the provisions set forth in the Purchase Contract and Pledge Agreement. Any such notice and delivery may not be conditioned upon the level at which the Reset Rate is established in the Remarketing. Any such notice and delivery may be withdrawn, other than during a Blackout Period, by notifying the Custodial Agent on or prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Applicable Remarketing Period in accordance with the provisions set forth in the Purchase Contract and Pledge Agreement. Any such notice and delivery not withdrawn in accordance with the immediately preceding sentence will be irrevocable with respect to each Remarketing to occur during the Applicable Remarketing Period. Pursuant to Section 5.02 of the Purchase Contract and Pledge Agreement, by (or, in the case of a Final Remarketing, promptly after) 4:00 p.m., New York City time, on the Business Day immediately preceding the first day of the Applicable Remarketing Period, the Custodial Agent, based on the notices and deliveries received by it prior to such time, shall notify the Remarketing Agent of the aggregate principal amount of Separate Notes surrendered for Remarketing. Pursuant and subject to Section 5.02 of the Purchase Contract and Pledge Agreement, Remarketable Senior Notes that underlie Applicable Ownership Interests in Notes included in Corporate Units will be deemed surrendered for Remarketing (unless, in the case of a Final Remarketing, the Holder thereof has duly notified the Purchase Contract Agent in writing of its intent to effect a Cash Settlement and timely paid the Purchase Price) and will be remarketed in accordance with the terms of the Remarketing Agreement and the Purchase Contract and Pledge Agreement.

(c) The right of each Holder of Remarketed Notes to have such Remarketable Senior Notes remarketed on any Remarketing Date and sold on any Optional Remarketing Date or Final Remarketing Date, as the case may be, shall be subject to the conditions that (i)(A) the Remarketing Agent conducts any Optional Remarketing or (B) in the case of a Final Remarketing, that no Successful Optional Remarketing has occurred pursuant to the terms of the Remarketing Agreement and the Purchase Contract and Pledge Agreement, (ii) a Termination Event has not occurred prior to the Optional Remarketing Date or Final Remarketing Date, as the case may be, (iii) the Remarketing Agent is able to find a purchaser or purchasers for Remarketed Notes at the Remarketing Price based on the Reset Rate and (iv) each condition precedent to settlement of the Remarketed Notes set forth in the Remarketing Agreement is satisfied or waived.

(d) Neither the Trustee, the Company, nor the Remarketing Agent shall be obligated in any case to provide funds to make payment upon surrender of Remarketable Senior Notes for remarketing.

Section 902. Remarketing.

(a) Unless a Termination Event has occurred prior to such date, if the Company elects to conduct an Optional Remarketing during an Optional Remarketing Period selected by the Company pursuant to the Purchase Contract and Pledge Agreement, the Remarketing Agent shall use its commercially reasonable efforts to remarket the Remarketed Notes at the applicable Remarketing Price as provided in the Remarketing Agreement.

(b) In the case there is no Successful Optional Remarketing during the Period for Optional Remarketing, either because the Remarketing Agent is unable to remarket the Remarketable Senior Notes at the applicable Remarketing Price or because a condition precedent to the Remarketing has not been satisfied, and unless a Termination Event has occurred prior to such date, during the Final Remarketing Period, the Remarketing Agent shall use its commercially reasonable efforts to remarket the Remarketed Notes at the applicable Remarketing Price as provided in the Remarketing Agreement. The Remarketing on any Remarketing Date will be considered successful if the resulting proceeds are at least equal to the applicable Remarketing Price. The Company has the right to postpone any Optional Remarketing for any reason in its sole and absolute discretion. The Company has the right to postpone the Final Remarketing in its sole and absolute discretion on any day prior to the last three Business Days of the Final Remarketing Period.

(c) The Company may only remarket the Remarketable Senior Notes as fixed-rate notes.

Section 903. Reset Rate.

(a) In connection with each Remarketing, in order to remarket the Remarketable Senior Notes, the Remarketing Agent, in consultation with the Company, may reset the interest rate on the Remarketable Senior Notes either upward or downward (the new interest rate referred to as the “Reset Rate”).

(b) Anything herein to the contrary notwithstanding, no Reset Rate shall in any event exceed the maximum rate permitted by applicable law.

(c) In the event of a Successful Remarketing, the interest rate for the Remarketable Senior Notes shall be reset on the Remarketing Settlement Date to the applicable Reset Rate as determined by the Remarketing Agent, in consultation with the Company, under the Remarketing Agreement, and the Company shall (1) notify the Trustee by an Officers' Certificate delivered to the Trustee and (2) request the Depository to notify its Depository Participants holding Remarketable Senior Notes, in each case, of the Reset Rate and the Interest Payment Dates established for the Remarketable Senior Notes during the Remarketing no later than 9:00 a.m., New York City time, on the Business Day following the date of the Successful Remarketing. Upon a Successful Remarketing, if the interest rate for the Remarketable Senior Notes is reset, the Reset Rate shall apply to all Outstanding Remarketable Senior Notes, whether or not the Holders of all Outstanding Remarketable Senior Notes participated in such Remarketing.

(d) If a reset of the interest rate on the Remarketable Senior Notes occurs pursuant to a Successful Optional Remarketing, the Reset Rate of the Remarketable Senior Notes shall be the interest rate determined by the Remarketing Agent, in consultation with the Company, pursuant to the Remarketing Agreement, as the interest rate the Remarketable Senior Notes should bear in order for the Remarketing proceeds to equal at least 100% of the sum of the Treasury Portfolio Purchase Price and the Separate Notes Purchase Price (if any).

(e) If a reset of the interest rate on the Remarketable Senior Notes occurs pursuant to a Successful Final Remarketing, the Reset Rate shall be the interest rate determined by the Remarketing Agent, in consultation with the Company, pursuant to the Remarketing Agreement, as the rate the Remarketable Senior Notes should bear in order for the Remarketing proceeds to equal at least 100% of the aggregate principal amount of Remarketable Senior Notes to be remarketed.

(f) In the event of a Successful Remarketing, on and after the Remarketing Settlement Date the Remarketable Senior Notes shall bear interest, to the extent permitted by law, on any overdue principal and interest at the Reset Rate.

(g) In the event of a Failed Final Remarketing, or if no Applicable Ownership Interests in Notes are included in Corporate Units (or the Holder of each such Corporate Unit has duly notified the Purchase Contract Agent in writing of its intent to effect a Cash Settlement and timely paid the Purchase Price) and none of the Holders of the Separate Notes elect to have their Remarketable Senior Notes remarketed in any Remarketing, the applicable interest rate on the Remarketable Senior Notes will not be reset and will continue to be the Securities Rate.

(h) If there is a Failed Remarketing, the Company shall cause a notice of the unsuccessful Remarketing to be published not later than 9:00 a.m., New York City time, on the Business Day following the Applicable Remarketing Period. This notice shall be validly published by furnishing such information on a Current Report on Form 8-K or by making a timely release to any appropriate news agency, including Bloomberg Business News and the Dow Jones News Service.

Section 904. Modification of Terms in Connection with a Successful Remarketing. Following any Successful Remarketing of the Remarketable Senior Notes:

(a) the interest rate on the Remarketable Senior Notes may be reset pursuant to Section 903; and

(b) interest on the Remarketable Senior Notes will be payable semi-annually on May 1 and November 1 of each year, as set forth in Section 205.

Any such modifications shall take effect only if there is a Successful Remarketing. Any such modifications shall become effective on the Remarketing Settlement Date, without the consent of Holders, and shall apply to all Remarketable Senior Notes, whether or not included in such Successful Remarketing.

Section 905. Put Right.

(a) If there has not been a Successful Remarketing on or prior to the last day of the Final Remarketing Period, Holders of Remarketable Senior Notes will, subject to this Section 905, have the right (the "Put Right") to require the Company to purchase such Remarketable Senior Notes for cash on the Purchase Contract Settlement Date, at a price per Remarketable Senior Note to be purchased equal to the principal amount of the applicable Remarketable Senior Notes (the "Put Price").

(b) The Put Right of a Holder of a Separate Note shall only be exercisable upon delivery of a notice substantially in the form attached as Exhibit C hereto (or, in the case of Global Notes, in accordance with applicable procedures of the Depository), together with such Holder's Separate Notes, to the Trustee by such Holder at or prior to 5:00 p.m., New York City time, on the second Business Day immediately preceding the Purchase Contract Settlement Date. Such Put Right for a Holder of a Separate Note may be exercised with respect to all or a portion of such Holder's Separate Notes (so long as such portion is an integral multiple of $1,000 principal amount). Prior to 11:00 a.m., New York City time, on the Purchase Contract Settlement Date, the Company shall deposit with the Trustee immediately available funds in an amount sufficient to pay, on the Purchase Contract Settlement Date, the aggregate Put Price of all Separate Notes with respect to which a Holder has exercised a Put Right. In exchange for any Separate Notes surrendered pursuant to the Put Right, the Trustee shall then distribute such amount to the Holders of such Separate Notes; provided that the Trustee shall have no obligation to make any such distribution except to the extent it has received such funds from the Company, and the Trustee shall have no obligation to advance its own funds in respect of any Put Price.

(c) If there has not been a Successful Remarketing on or prior to the last day of the Final Remarketing Period, the Put Right of Holders with respect to Remarketable Senior Notes relating to Applicable Ownership Interests in Notes included in Corporate Units will be deemed to be automatically exercised in accordance with Section 5.02(b) of the Purchase Contract and Pledge Agreement (unless any such Holder has duly notified the Purchase Contract Agent and the Trustee in writing of its intent to effect a Cash Settlement and timely paid the Purchase Price). The Purchase Contract Agent shall have no obligation to take any action in respect of any such deemed exercise other than as expressly set forth in the Purchase Contract and Pledge Agreement, and the Trustee and the Collateral Agent may conclusively rely on any notice delivered by the Purchase Contract Agent or the Company as to the aggregate principal amount of Remarketable Senior Notes subject to such deemed exercise.

(d) Remarketable Senior Notes purchased pursuant to the Put Right shall be cancelled by the Trustee.

ARTICLE 10

TAX TREATMENT

Section 1001. Tax Treatment. The Company agrees, and by acceptance of a Corporate Unit, a Book-Entry Interest or a Separate Note, each Holder (or Beneficial Owner) will be deemed to have agreed for U.S. federal, state and local income tax purposes (unless otherwise required by any taxing authority) (a) to treat each Beneficial Owner of a Corporate Unit as the owner, separately, of each of the applicable Purchase Contract and the applicable interests in the Collateral, including the Remarketable Senior Notes underlying the Applicable Ownership Interests in Notes constituting a part of such Corporate Unit, (b) to treat the Remarketable Senior Notes as indebtedness, (c) with respect to Holders (or Beneficial Owners) who purchase Corporate Units (or beneficial interests therein) upon issuance, to allocate, as of the Original Issue Date, 100% of the purchase price for a Corporate Unit to the Applicable Ownership Interests in Notes comprising of the Remarketable Senior Notes and 0% to each Purchase Contract, which will establish each Holder's (or Beneficial Owner's) initial tax basis in each Purchase Contract as $0 and each Holder's (or Beneficial Owner's) initial tax basis in each Applicable Ownership Interests in Notes as $50, and (d) in all events, not to take any position for U.S. federal, state or local income tax purposes that is inconsistent with or contrary to the above covenants.

Section 1002. FATCA. The Company agrees (i) to provide the Trustee, the Purchase Contract Agent and the Collateral Agent with such reasonable information as it has in its possession to enable the Trustee, the Purchase Contract Agent and the Collateral Agent to determine whether any payments pursuant to the Indenture are subject to the withholding requirements described in Section 1471(b) of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), or otherwise imposed pursuant to Sections 1471 through 1474 of the Code and any regulations, or agreements thereunder or official interpretations thereof ("Applicable Law"), and (ii) that the Trustee, the Purchase Contract Agent and the Collateral Agent shall be entitled to make any withholding or deduction from payments under the Indenture to the extent necessary to comply with Applicable Law, for which the Trustee, the Purchase Contract Agent and the Collateral Agent shall not have any liability.

ARTICLE 11

MISCELLANEOUS PROVISIONS

Section 1101. Recitals by Company; Concerning the Trustee. The recitals in this First Supplemental Indenture are made by the Company only and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this First Supplemental Indenture or the Remarketable Senior Notes. The Trustee shall have no responsibility or liability with respect to any information, statement or recital in any prospectus, prospectus supplement, free writing prospectus or other disclosure material prepared or distributed with respect to the issuance of the Remarketable Senior Notes or the Corporate Units. The Trustee shall have no responsibility or liability with respect to the interest rate on the Remarketable Senior Notes (including any Reset Rate) and whether at any time it complies with applicable law. All of the provisions contained in the Original Indenture in respect of the rights, privileges, protections, immunities, indemnities, powers and duties of the Trustee and the Agents shall be applicable in respect of Remarketable Senior Notes and of this First Supplemental Indenture as fully and with like effect as if set forth herein in full. The Trustee and the Agents assume no duties, responsibilities or liabilities by reason of this First Supplemental Indenture other than as set forth in the Original Indenture or as expressly set forth herein.

Section 1102. Ratification and Incorporation of Original Indenture. As supplemented hereby, the Original Indenture is in all respects ratified and confirmed, and the Original Indenture, as supplemented by this First Supplemental Indenture shall be read, taken and construed as one and the same instrument.

Section 1103. Executed in Counterparts. This First Supplemental Indenture may be simultaneously executed in several counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument. The exchange of copies of this First Supplemental Indenture and of signature pages by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this First Supplemental Indenture as to the parties hereto and may be used in lieu of the original First Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile, PDF or other electronic means (including any electronic signature complying with the U.S. federal ESIGN Act of 2000 or the New York Electronic Signatures and Records Act) shall be deemed to be their original signatures for all purposes. All notices, approvals, consents, requests and any communications to the Trustee hereunder must be in writing in English and must be in the form of a document that is signed manually or by way of an electronic signature (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other electronic signature provider acceptable to the Trustee). The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including, without limitation, the risk of the Trustee acting on unauthorized instructions and the risk of interception and misuse by third parties.

Section 1104. Trustee Not Responsible for Purchase Contract and Pledge Agreement. For the avoidance of doubt, the Trustee shall not be deemed to have any obligation with respect to matters addressed in the Purchase Contract and Pledge Agreement that are not expressly set forth in the Indenture, and the Trustee shall not be deemed to have notice of the contents of, or be charged with any duties under, the Purchase Contract and Pledge Agreement or the Remarketing Agreement by reason of any reference thereto herein. U.S. Bank Trust Company, National Association, in its capacities as Purchase Contract Agent, Collateral Agent, Custodial Agent and Securities Intermediary, shall be entitled to all of the rights, powers, privileges, protections, indemnities and immunities afforded to it in such capacities under the Purchase Contract and Pledge Agreement in connection with any action taken or omitted by it under or in connection with this First Supplemental Indenture, and no duties or obligations of U.S. Bank Trust Company, National Association in any such capacity shall be implied by reason of this First Supplemental Indenture.

Section 1105. Security Registrar and Paying Agent. Pursuant to the Original Indenture, the Company hereby appoints the Trustee as Security Registrar and Paying Agent with respect to the Remarketable Senior Notes.

Section 1106. Trustee Not Responsible for Remarketing. None of the Trustee, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent or the Securities Intermediary shall have any responsibility or liability for (i) the conduct, timing, postponement or outcome of any Remarketing, (ii) the determination of any Reset Rate, Remarketing Price, Treasury Portfolio Purchase Price, Separate Notes Purchase Price or Interest Payment Date, (iii) the occurrence or non-occurrence of a Successful Remarketing, Failed Remarketing or Termination Event, (iv) any action or inaction of the Remarketing Agent or the Depository or (v) the publication of any notice required to be given by the Company under Article 9, and each of them may conclusively rely, without independent investigation, on any notice, Officers' Certificate or other certificate delivered by the Company or the Remarketing Agent with respect to any of the foregoing. None of the Trustee, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent or the Securities Intermediary shall be obligated to provide funds to make payment upon surrender of Remarketable Senior Notes for remarketing or to advance its own funds for any payment in respect of the Remarketable Senior Notes.

Section 1107. Notice upon Trustee. Any notice, direction, request, demand, consent or waiver by the Company or any Holder to or upon the Trustee, Security Registrar or Paying Agent for the Remarketable Senior Notes shall be deemed to have been sufficiently given, made or filed, for all purposes, only if given, made or filed in writing and actually received by a Responsible Officer of the Trustee at the Corporate Trust Office.

Section 1108. First Supplemental Indenture Controls. The provisions of this First Supplemental Indenture shall supersede the provisions of the Original Indenture to the extent the Original Indenture is inconsistent herewith; provided that nothing in this First Supplemental Indenture shall be construed to limit or diminish any right, privilege, protection, indemnity or immunity of the Trustee under the Original Indenture. For all purposes under the Original Indenture, the Remarketable Senior Notes shall constitute a single series of Senior Notes.

Section 1109. Governing Law. This First Supplemental Indenture and each Remarketable Senior Note shall be governed by the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State (without regard to the conflicts of law principles thereof).

Section 1110. Separability. In case any one or more of the provisions contained in this First Supplemental Indenture or in the Remarketable Senior Notes shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this First Supplemental Indenture or of the Remarketable Senior Notes, but this First Supplemental Indenture and the Remarketable Senior Notes shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 1111. Waiver of Jury Trial

EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS FIRST SUPPLEMENTAL INDENTURE, THE REMARKETABLE SENIOR NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[*Signatures follow*]

IN WITNESS WHEREOF, each party hereto has caused this instrument to be signed in its name and behalf by its duly authorized officer, all as of the day and year first above written.

H2O AMERICA

By: /s/ Ann P. Kelly
Name: Ann P. Kelly
Title: Chief Financial Officer and Treasurer

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Laurel Casasanta
Name: Laurel Casasanta
Title: Vice President

EXHIBIT A
FORM OF REMARKETABLE SENIOR 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 OF A DEPOSITARY. THIS NOTE IS EXCHANGEABLE FOR REMARKETABLE SENIOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN SUCH LIMITED CIRCUMSTANCES.]*

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

THE NOTES EVIDENCED HEREBY WILL BE ISSUED, AND MAY BE TRANSFERRED, ONLY IN DENOMINATIONS OF $1,000 AND ANY GREATER INTEGRAL MULTIPLE OF $1,000, EXCEPT AS PROVIDED IN THE FIRST SUPPLEMENTAL INDENTURE. ANY ATTEMPTED TRANSFER, SALE OR OTHER DISPOSITION OF NOTES IN A DENOMINATION OF LESS THAN $1,000 SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER EXCEPT AS PROVIDED IN THE FIRST SUPPLEMENTAL INDENTURE. ANY SUCH TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH NOTES FOR ANY PURPOSE, INCLUDING BUT NOT LIMITED TO THE RECEIPT OF PAYMENTS IN RESPECT OF SUCH NOTES, AND SUCH TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH NOTES.

* Insert in Global Notes.

H2O AMERICA

[Up to]* $[ ]

REMARKETABLE SENIOR NOTE DUE 2031

Dated: [ ] [ ], 20[ ]

NUMBER [ ] **[CUSIP NO: 40447NAA4]****

Registered Holder: **[ISIN NO: US40447NAA46]****

H2O AMERICA, a Delaware corporation (the "Company," which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to the Registered Holder named above, the principal sum [of Dollars]*** [specified in the Schedule of Increases or Decreases in Notes annexed hereto]* on November 1, 2031 (the "Stated Maturity"), and to pay interest thereon at the rate of 5.300% per annum, such interest to accrue from November 3, 2026 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, subject to any reset of such interest rate in connection with a Successful Remarketing, as described below. Subject to any changes in the interest payment dates as set forth in the First Supplemental Indenture (as defined on the reverse hereof) in connection with a Successful Remarketing, interest is payable quarterly in arrears on each February 1, May 1, August 1 and November 1, commencing on February 1, 2027 (the "Interest Payment Dates"), until the principal thereof is paid or made available for payment. On and after the Purchase Contract Settlement Date or, if earlier, the Optional Remarketing Settlement Date, interest on this Note will be payable at the relevant Reset Rate or, if the interest rate has not been reset, at the Securities Rate of 5.300% per year. The Reset Rate, if any, shall be established pursuant to the terms of the Indenture and the Remarketing Agreement. If Interest Payments are not paid, they will accrue and compound on each Interest Payment Date until paid at the annual rate of 5.300% per annum, to the extent permitted by applicable law.

The amount of interest payable for any period will be computed on the basis of a 360-day year of twelve 30-day months, and with respect to any period less than a full calendar month, on the basis of the actual number of days elapsed per 30-day month. The interest so payable on an Interest Payment Date will be paid to the Person in whose name this Note is registered, at the close of business on the Regular Record Date next preceding such Interest Payment Date; provided that interest payable at Stated Maturity will be paid to the Person to whom principal is payable. Any such interest that is not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid (i) to the Person in whose name this Note (or any Remarketable Senior Note issued upon registration of transfer or exchange thereof) is registered at the close of business on a Special Record Date for the payment of such defaulted interest established in accordance with Section 305 of the Original Indenture or (ii) at any time in any other lawful manner not inconsistent with the requirements of the securities exchange, if any, on which the Remarketable Senior Notes may be listed, and upon such notice as may be required by such exchange. The "Regular Record Date" with respect to any Interest Payment Date for the Notes, will be the 15th day of the calendar month immediately preceding the calendar month in which the applicable Interest Payment Date falls (whether or not a Business Day); provided that if any of the Remarketable Senior Notes or the related Corporate Units are held by a securities depository in book-entry form, the Regular Record Date for such Remarketable Senior Notes will be the close of business on the Business Day immediately preceding the applicable Interest Payment Date.

* Insert in Global Notes and Remarketable Senior Notes included in Corporate Units in global form.
** Insert in Global Notes.
*** Insert in Notes other than (i) Global Notes and (ii) Remarketable Senior Notes included in Corporate Units in global form.

If an Interest Payment Date or the Stated Maturity of the Remarketable Senior Notes or the date (if any) on which the Company is required to purchase the Remarketable Senior Notes falls on a day that is not a Business Day, the applicable payment will be made on the next succeeding Business Day, and no interest shall accrue or be paid in respect of such delay.

This Note may be presented for payment of principal and interest at the Corporate Trust Office of the Trustee; provided, however, that payment of interest will be made by the Company by wire transfer to the account designated by the person entitled thereto in writing to the Trustee at least five Business Days prior to the relevant Interest Payment Date. Payment of the principal and interest on this Note shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

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.

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

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

Dated:

H2O AMERICA

By: _____
Title:

By: _____
Title:

CERTIFICATE OF AUTHENTICATION

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

Dated:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

(Reverse Side of Note)

This Note is one of a duly authorized issue of Senior Notes of the Company (the "Notes"), issued and issuable in one or more series under a Senior Note Indenture, dated as of November 3, 2026 (the "Original Indenture"), between the Company and U.S. Bank Trust Company, National Association, as Trustee (the "Trustee," which term includes any successor trustee under the Indenture), as supplemented by the First Supplemental Indenture, dated as of November 3, 2026, by and between the Company and the Trustee (the "First Supplemental Indenture" and, together with the Original Indenture, as it may be hereafter supplemented or amended from time to time, the "Indenture"). Reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders (the word "Holder" or "Holders" meaning the registered holder or registered holders) of the Notes. This Note is one of the series designated on the face hereof (the "Remarketable Senior Notes") which is limited in aggregate principal amount to $373,750,000. Capitalized terms used herein but not defined herein shall have the respective meanings assigned thereto in the Indenture.

The Company may not redeem the Remarketable Senior Notes prior to maturity.

The Remarketable Senior Notes shall be remarketed as provided in the First Supplemental Indenture. In connection with a Successful Remarketing, the Remarketing Agent, in consultation with the Company, may remarket the Remarketable Senior Notes and reset the interest rate of the Remarketable Senior Notes. Following any Successful Remarketing of the Remarketable Senior Notes, the interest will be payable semi-annually, on May 1 and November 1 of each year.

Pursuant to the First Supplemental Indenture, if there has not been a Successful Remarketing prior to the end of the Final Remarketing Period, Holders of the Remarketable Senior Notes will have the right to require the Company to purchase such Remarketable Senior Notes for cash on the Purchase Contract Settlement Date at a price per Remarketable Senior Note to be purchased equal to the principal amount of the applicable Remarketable Senior Note.

The Remarketable Senior Notes are not subject to the operation of any sinking fund and, except as set forth in the First Supplemental Indenture, are not repayable at the option of a Holder thereof prior to the Stated Maturity.

If an Event of Default with respect to the Notes of this series shall occur and be continuing, the principal of the Notes of this series may be declared due and payable in the manner, with the effect and subject to the conditions provided in the Indenture.

The provisions of Sections 403 and 404 of the Original Indenture shall not apply to the Remarketable Senior Notes, and the provisions of Section 401 of the Original Indenture shall not apply to the Remarketable Senior Notes to the extent the provisions of Section 401 would allow for satisfaction and discharge of the Remarketable Senior Notes prior to the Stated Maturity, except in the case of an exercise by a Holder of the Put Right pursuant to Section 905 of the First Supplemental Indenture on the Purchase Contract Settlement Date.

The Company will not pay any additional amounts to any Holder in respect of any tax, assessment or governmental charge.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes of each series affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than a majority in principal amount of the Notes at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes of each series at the time Outstanding, on behalf of the Holders of all Notes of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

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

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Security Register, upon surrender of this Note for registration of transfer at the office or agency of the Company for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar and duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes of this series, of authorized denominations and of like tenor and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge shall be made for any such registration of transfer or exchange, but the Company, the Trustee and/or any Agent may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Pursuant to the First Supplemental Indenture, Remarketable Senior Notes comprising a part of Applicable Ownership Interests in Notes that are no longer a component of the Corporate Units and are released from the Collateral Account will be initially issued as Global Notes. Except upon recreation of Corporate Units and except as otherwise provided in the Indenture, Remarketable Senior Notes represented by Global Notes will not be exchangeable for, and will not otherwise be issuable as, Remarketable Senior Notes in certificated form. Unless and until such Global Notes are exchanged for Remarketable Senior Notes in certificated form, Global Notes may be transferred, in whole but not in part, and any payments on the Remarketable Senior Notes shall be made, only to the Depository or a nominee of the Depository, or to a successor Depository selected or approved by the Company or to a nominee of such successor Depository.

By acceptance of this Note or a beneficial interest in this Note, each Holder hereof and any Person acquiring a beneficial interest herein, for United States federal, state and local tax purposes, agrees to treat this Note as indebtedness and to take other positions for such tax purposes as set forth in the First Supplemental Indenture.

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

No recourse shall be had for the payment of the principal of or interest on this Note, or for any claim based hereon or otherwise in respect hereof, or based on or in respect of the Indenture, against any stockholder, officer, director or employee, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as a part of the consideration for the issue hereof, expressly waived and released.

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

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)
TEN ENT- as tenants by the entireties	
JT TEN- as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts to Minors Act
	(State)

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

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

(please insert Social Security or other identifying number of assignee)

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING POSTAL ZIP CODE OF ASSIGNEE

the within Note and all rights thereunder, hereby irrevocably constituting and appointing

agent to transfer said Note on the books of the Company, with full power of substitution in the premises.

Dated: _____

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

SCHEDULE OF INCREASES OR DECREASES IN THIS NOTE

The initial principal amount of this Note is: $

Changes to Principal Amount of [Global] Note

Date	Principal Amount by which this Note is to be Decreased or Increased and the Reason for the Decrease or Increase	Remaining Principal Amount of this Note	Signature of Authorized Signatory of Trustee

EXHIBIT B
FORM OF REMARKETABLE SENIOR NOTE
(FOLLOWING A SUCCESSFUL REMARKETING)

[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 OF A DEPOSITARY. THIS NOTE IS EXCHANGEABLE FOR REMARKETABLE SENIOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN SUCH LIMITED CIRCUMSTANCES.]*

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

THE NOTES EVIDENCED HEREBY WILL BE ISSUED, AND MAY BE TRANSFERRED, ONLY IN DENOMINATIONS OF $1,000 AND ANY GREATER INTEGRAL MULTIPLE OF $1,000. ANY ATTEMPTED TRANSFER, SALE OR OTHER DISPOSITION OF NOTES IN A DENOMINATION OF LESS THAN $1,000 SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. ANY SUCH TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH NOTES FOR ANY PURPOSE, INCLUDING BUT NOT LIMITED TO THE RECEIPT OF PAYMENTS IN RESPECT OF SUCH NOTES, AND SUCH TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH NOTES.

* Insert in Global Notes.

H2O AMERICA

[Up to]* $[ ]

REMARKETABLE SENIOR NOTE DUE 2031

Dated: [ ] [ ], 20[ ]

NUMBER [ ] **[CUSIP NO: 40447NAA4]****

Registered Holder: **[ISIN NO: US40447NAA46]****

H2O AMERICA, a Delaware corporation (the "Company," which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to the Registered Holder named above, the principal sum [of Dollars]*** [specified in the Schedule of Increases or Decreases in Notes annexed hereto]* on November 1, 2031 (the "Stated Maturity"), and to pay interest thereon at the rate of [ ]% per annum, such interest to accrue from [___] [ ], 2029 or from the most recent Interest Payment Date to which interest has been paid or duly provided for. Interest is payable semi-annually in arrears on each May 1 and November 1, commencing on [__] [ ], 20[ ] (the "Interest Payment Dates"), until the principal thereof is paid or made available for payment, provided that any principal, and any such installment of interest, that is overdue shall bear interest at such rate (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand.

The amount of interest payable for any period will be computed on the basis of a 360-day year of twelve 30-day months, and with respect to any period less than a full calendar month, on the basis of the actual number of days elapsed per 30-day month. The interest so payable on an Interest Payment Date will be paid to the Person in whose name this Note is registered, at the close of business on the Regular Record Date next preceding such Interest Payment Date; provided that interest payable at Stated Maturity will be paid to the Person to whom principal is payable. Any such interest that is not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid (i) to the Person in whose name this Note (or any Remarketable Senior Note issued upon registration of transfer or exchange thereof) is registered at the close of business on a Special Record Date for the payment of such defaulted interest established in accordance with Section 305 of the Original Indenture or (ii) at any time in any other lawful manner not inconsistent with the requirements of the securities exchange, if any, on which the Remarketable Senior Notes may be listed, and upon such notice as may be required by such exchange. The "Regular Record Date" with respect to any Interest Payment Date for the Notes, will be the 15th day of the calendar month immediately preceding the calendar month in which the applicable Interest Payment Date falls (whether or not a Business Day); provided that if any of the Remarketable Senior Notes are held by a securities depository in book-entry form, the Regular Record Date for such Remarketable Senior Notes will be the close of business on the Business Day immediately preceding the applicable Interest Payment Date.

* Insert in Global Notes and Remarketable Senior Notes included in Corporate Units in global form.

** Insert in Global Notes.

*** Insert in Notes other than (i) Global Notes and (ii) Remarketable Senior Notes included in Corporate Units in global form.

If an Interest Payment Date or the Stated Maturity of the Remarketable Senior Notes falls on a day that is not a Business Day, the applicable payment will be made on the next succeeding Business Day, and no interest shall accrue or be paid in respect of such delay.

This Note may be presented for payment of principal and interest at the Corporate Trust Office of the Trustee; provided, however, that payment of interest will be made by the Company by wire transfer to the account designated by the person entitled thereto in writing to the Trustee at least five Business Days prior to the relevant Interest Payment Date. Payment of the principal and interest on this Note shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

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.

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

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

H2O AMERICA

By: _____
Title:

By: _____
Title:

CERTIFICATE OF AUTHENTICATION

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

Dated:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

(Reverse Side of Note)

This Note is one of a duly authorized issue of Senior Notes of the Company (the "Notes"), issued and issuable in one or more series under a Senior Note Indenture, dated as of November 3, 2026 (the "Original Indenture"), between the Company and U.S. Bank Trust Company, National Association, as Trustee (the "Trustee," which term includes any successor trustee under the Indenture), as supplemented by the First Supplemental Indenture, dated as of November 3, 2026, by and between the Company and the Trustee (the "First Supplemental Indenture" and, together with the Original Indenture, as it may be hereafter supplemented or amended from time to time, the "Indenture"). Reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders (the word "Holder" or "Holders" meaning the registered holder or registered holders) of the Notes. This Note is one of the series designated on the face hereof (the "Remarketable Senior Notes") which is limited in aggregate principal amount to $373,750,000. Capitalized terms used herein but not defined herein shall have the respective meanings assigned thereto in the Indenture.

The Company may not redeem the Remarketable Senior Notes prior to maturity.

The Remarketable Senior Notes are not subject to the operation of any sinking fund and are not repayable at the option of a Holder thereof prior to the Stated Maturity.

If an Event of Default with respect to the Notes of this series shall occur and be continuing, the principal of the Notes of this series may be declared due and payable in the manner, with the effect and subject to the conditions provided in the Indenture.

The provisions of Sections 403 and 404 of the Original Indenture shall not apply to the Remarketable Senior Notes, and the provisions of Section 401 of the Original Indenture shall not apply to the Remarketable Senior Notes to the extent the provisions of Section 401 would allow for satisfaction and discharge of the Remarketable Senior Notes prior to the Stated Maturity.

The Company will not pay any additional amounts to any Holder in respect of any tax, assessment or governmental charge.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes of each series affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than a majority in principal amount of the Notes at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes of each series at the time Outstanding, on behalf of the Holders of all Notes of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

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

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Security Register, upon surrender of this Note for registration of transfer at the office or agency of the Company for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar and duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes of this series, of authorized denominations and of like tenor and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge shall be made for any such registration of transfer or exchange, but the Company, the Trustee and/or any Agent may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Except as otherwise provided in the Indenture, Remarketable Senior Notes represented by Global Notes will not be exchangeable for, and will not otherwise be issuable as, Remarketable Senior Notes in certificated form. Unless and until such Global Notes are exchanged for Remarketable Senior Notes in certificated form, Global Notes may be transferred, in whole but not in part, and any payments on the Remarketable Senior Notes shall be made, only to the Depository or a nominee of the Depository, or to a successor Depository selected or approved by the Company or to a nominee of such successor Depository.

By acceptance of this Note or a beneficial interest in this Note, each Holder hereof and any Person acquiring a beneficial interest herein, for United States federal, state and local tax purposes, agrees to treat this Note as indebtedness and to take other positions for such tax purposes as set forth in the First Supplemental Indenture.

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

No recourse shall be had for the payment of the principal of or interest on this Note, or for any claim based hereon or otherwise in respect hereof, or based on or in respect of the Indenture, against any stockholder, officer, director or employee, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as a part of the consideration for the issue hereof, expressly waived and released.

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

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)
TEN ENT- as tenants by the entireties	
JT TEN- as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts to Minors Act
	(State)

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

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

---

(please insert Social Security or other identifying number of assignee)

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING POSTAL ZIP CODE OF ASSIGNEE

---

the within Note and all rights thereunder, hereby irrevocably constituting and appointing

---

agent to transfer said Note on the books of the Company, with full power of substitution in the premises.

Dated:

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

SCHEDULE OF INCREASES OR DECREASES IN THIS NOTE

The initial principal amount of this Note is: $

Changes to Principal Amount of [Global] Note

Date	Principal Amount by which this Note is to be Decreased or Increased and the Reason for the Decrease or Increase	Remaining Principal Amount of this Note	Signature of Authorized Signatory of Trustee

EXHIBIT C

FORM OF PUT NOTICE

TO: H2O America

U.S. Bank Trust Company, National Association
111 Fillmore Avenue
St. Paul, Minnesota 55107
Attn: Global Corporate Trust

U.S. Bank Trust Company, National Association
CityPlace I
185 Asylum Street, 27th Floor
Hartford, CT 06103
Attn: Global Corporate Trust

Please refer to the Senior Note Indenture, dated as of November 3, 2026 (the "Original Indenture"), between H2O America (the "Company") and U.S. Bank Trust Company, National Association (herein called the "Trustee"), as heretofore supplemented and amended and as further supplemented by the First Supplemental Indenture dated as of November 3, 2026 (the "First Supplemental Indenture" and, together with the Original Indenture, as it may be hereafter supplemented or amended from time to time, the "Indenture"), by and between the Company and the Trustee. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

The undersigned registered Holder of the Remarketable Senior Note designated below, which is being delivered to the Trustee herewith, hereby requests and instructs the Company to purchase such Remarketable Senior Note or the portion thereof specified below (so long as such portion is in a principal amount of $1,000 or an integral multiple thereof), in accordance with the terms of the Indenture, at the price of 100% of the principal amount of such Remarketable Senior Note (or portion thereof). The Remarketable Senior Note (or portion thereof) shall be purchased by the Company as of the Purchase Contract Settlement 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 Remarketable Senior Note in every particular without alteration or enlargement or any change whatever.

Signature Guarantee:

Note Certificate Number (if applicable):

Principal Amount:

Portion to be purchased if other than the Principal Amount set forth above:

Social Security or Other Taxpayer Identification Number:

DTC Account Number (if applicable):

Name of Account Party (if applicable):

PAYMENT INSTRUCTIONS: The purchase price of the Remarketable Senior Note should be paid by check in the name of the person(s) set forth below and mailed to the address set forth below.

Name(s): _____
(Please Print)

Address _____
(Please Print)

_____
(Zip Code)

_____
(Zip Code)

_____
(Tax Identification or Social Security Number)

EXHIBIT 4.4

H2O AMERICA

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,

as Purchase Contract Agent, Collateral Agent, Custodial Agent and Securities Intermediary

PURCHASE CONTRACT AND PLEDGE AGREEMENT

Dated as of November 3, 2026

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PURCHASE CONTRACT AND PLEDGE AGREEMENT, dated as of November 3, 2026, among H2O AMERICA, a corporation duly organized and existing under the laws of Delaware (the "**Company**"), U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, acting as purchase contract agent for, and, for purposes of the Pledge created hereby, as attorney-in-fact of, the Holders from time to time of the Units (in such capacities, together with its successors and assigns in such capacities, the "**Purchase Contract Agent**"), as collateral agent hereunder for the benefit of the Company (in such capacity, together with its successors in such capacity, the "**Collateral Agent**"), as custodial agent (in such capacity, together with its successors in such capacity, the "**Custodial Agent**"), and as securities intermediary (as defined in Section 8-102(a)(14) of the UCC) with respect to the Collateral Account (in such capacity, together with its successors in such capacity, the "**Securities Intermediary**").

RECITALS

WHEREAS, the Company has duly authorized the execution and delivery of this Agreement and the Certificates evidencing the Units;

WHEREAS, all things necessary to make the Purchase Contracts, when the Certificates are executed by the Company and authenticated, executed 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 these presents a valid agreement of the Company, in accordance with its terms, have been done; and

WHEREAS, pursuant to the terms of this Agreement and the Purchase Contracts, the Holders have irrevocably authorized the Purchase Contract Agent, as attorney-in-fact of such Holders, among other things, to execute and deliver this Agreement on behalf of such Holders, as attorney-in-fact of such Holders, and to grant the Pledge provided herein of the Collateral to secure the Obligations.

NOW, THEREFORE, the parties hereto agree 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 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;

(d) the following terms, which are defined in the UCC, shall have the meanings set forth therein: "certificated security," "control," "financial asset," "entitlement order," "securities account" and "security entitlement";

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

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

"**Act**" has the meaning, with respect to any Holder, set forth in Section 1.04.

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

"**Agent**" has the meaning set forth in Section 1.05; *provided* that, solely for purposes of Section 15.03, "**Agent**" shall have the meaning set forth therein.

"**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 Law**" has the meaning set forth in Section 10.07.

"**Applicable Market Value**" has the meaning set forth in Section 5.01(a).

"**Applicable Ownership Interests in Notes**" means a 1/20 undivided beneficial ownership interest in $1,000 principal amount of Notes, which interest constitutes a component of a Corporate Unit.

"**Applicable Ownership Interests in the Treasury Portfolio**" means:

(i) a 1/20 undivided beneficial ownership interest in $1,000 principal amount at maturity of U.S. Treasury securities (or principal or interest strips thereof) included in the Treasury Portfolio that mature on or prior to the Purchase Contract Settlement Date;

(ii) if the Optional Remarketing Settlement Date occurs prior to August 1, 2029, with respect to the originally scheduled Interest Payment Dates on the Notes that would have occurred on August 1, 2029 and the Purchase Contract Settlement Date, an undivided beneficial ownership interest in U.S. Treasury securities (or principal or interest strips thereof) that mature on or prior to (A) August 1, 2029 (in connection with the Interest Payment Date that would have occurred on August 1, 2029) and (B) November 1, 2029 (in connection with the Interest Payment Date that would have occurred on the Purchase Contract Settlement Date), each in an aggregate amount at maturity equal to the aggregate interest payments (assuming no reset of the interest rate) that would have been paid on August 1, 2029 and the Purchase Contract Settlement Date, respectively, with respect to a 1/20 undivided beneficial ownership interest in $1,000 principal amount of the Notes; and

(iii) if the Optional Remarketing Settlement Date occurs on or after August 1, 2029, with respect to the originally scheduled Interest Payment Date on the Notes that would have occurred on the Purchase Contract Settlement Date, an undivided beneficial ownership interest in U.S. Treasury securities (or principal or interest strips thereof) that mature on or prior to the Purchase Contract Settlement Date, in an aggregate amount at maturity equal to the aggregate interest payments (assuming no reset of the interest rate) that would have been paid on the Purchase Contract Settlement Date with respect to a 1/20 undivided beneficial ownership interest in $1,000 principal amount of the Notes.

If U.S. Treasury securities (or principal or interest strips thereof) that are to be included in the Treasury Portfolio in connection with a Successful Optional Remarketing have a yield that is less than zero on the Optional Remarketing Date, the Treasury Portfolio will consist of an amount in Cash equal to the aggregate principal amount at maturity of the U.S. Treasury securities described in clauses (i) and (ii) or (iii) above. If the provisions set forth in this paragraph apply, for all purposes herein, references to "Treasury security" and "U.S. Treasury securities (or principal or interest strips thereof)" in connection with the Treasury Portfolio will be deemed to be references to such aggregate amount of Cash, and any reference to clauses (i) and (ii) or (iii) in the definition of "Applicable Ownership Interests in the Treasury Portfolio" shall be deemed to be a reference to the portion of such aggregate Cash amount equal to the aggregate principal amount at maturity of the undivided beneficial ownership interest in the U.S. Treasury securities described in clause (i) above or clauses (ii) or (iii) above, respectively.

"**Applicable Procedures**" means, with respect to any payment, tender, redemption, transfer or exchange of or for beneficial interests in any Global Certificate, the rules and procedures of the Depository that apply to such payment, tender, redemption, transfer or exchange.

"**Applicable Remarketing Period**" means any of (i) any Optional Remarketing Period for which the Company has elected to conduct an Optional Remarketing pursuant to Section 5.02(a) or (ii) the Final Remarketing Period, as the context requires.

"**Authorized Officer**" means the Chairman of the Board of Directors, the President, any Vice President, the Treasurer or an Assistant Treasurer, the Secretary or an Assistant Secretary or any other Person duly authorized by the Company to act in respect of the matters relating to this Agreement.

"**Bankruptcy Code**" means Title 11 of the United States Code, or any other law of the United States that from time to time provides a uniform system of bankruptcy laws.

"**Base Indenture**" means the Senior Note Indenture, dated as of November 3, 2026, between the Company and U.S. Bank Trust Company, National Association, as trustee (including any provisions of the TIA that are deemed incorporated therein).

"**Beneficial Owner**" 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 such Depository (directly as a Depository Participant or as an indirect participant, in each case in accordance with the rules of such Depository).

"**Blackout Period**" means the period (i) if the Company elects to conduct an Optional Remarketing, from 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the applicable Optional Remarketing Period until the applicable Optional Remarketing Settlement Date or the date the Company announces that such Optional Remarketing was unsuccessful and (ii) after 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Final Remarketing Period.

"**Board of Directors**" means the board of directors of the Company or a duly authorized committee of that board or, to the extent duly authorized by such board of directors to act on its behalf, two or more Authorized Officers of the Company, acting jointly.

"**Board Resolution**" means one or more resolutions of the Board of Directors, a copy of which has been certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification and delivered to the Purchase Contract Agent.

"**Book-Entry Interest**" means a beneficial interest in a Global Certificate, 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 that is not a Saturday or Sunday or a day on which banking institutions in The City of New York or St. Paul, Minnesota are authorized or required by law or executive order to close or a day on which the Corporate Trust Office is closed for business.

"**CAP Obligations**" has the meaning set forth in Section 5.11(d).

"**Cash**" means any coin or currency of the United States as at the time shall be legal tender for payment of public and private debts.

"**Cash Settlement**" means any settlement by a Holder of its Obligations to pay the Purchase Price on the Purchase Contract Settlement Date with separate Cash pursuant to Section 5.02(b)(ix) or 5.03(a)(i).

"**Certificate**" means a Corporate Units Certificate or a Treasury Units Certificate, as the case may be.

"**Clause (i) Distribution**" has the meaning set forth in Section 5.05(a)(iv).

"**Clause (ii) Distribution**" has the meaning set forth in Section 5.05(a)(iv).

"**Clause (iv) Distribution**" has the meaning set forth in Section 5.05(a)(iv).

"**Closing Price**" has the meaning set forth in Section 5.01(a).

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Collateral**" means the collective reference to:

(i) the Collateral Account and all investment property and other financial assets from time to time credited to the Collateral Account and all security entitlements with respect thereto (other than the portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (ii) of the definition of Applicable Ownership Interests in the Treasury Portfolio)), including, without limitation, (A) the Applicable Ownership Interests in Notes and security entitlements relating thereto (and the Notes and security entitlements relating thereto Transferred to the Securities Intermediary for credit to the Collateral Account in respect of such Applicable Ownership Interests in Notes), (B) the portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of Applicable Ownership Interests in the Treasury Portfolio) of the Holders with respect to the Treasury Portfolio that is a component of the Corporate Units from time to time and security entitlements relating thereto, (C) any Treasury Securities and security entitlements relating thereto Transferred to the Securities Intermediary for credit to the Collateral Account from time to time in connection with the creation of Treasury Units in accordance with Section 3.13 and (D) payments made by Holders pursuant to Section 5.02(b)(ix) or 5.03;

(ii) all Proceeds of any of the foregoing (whether such Proceeds arise before or after the commencement of any proceeding under any applicable bankruptcy, insolvency or other similar law, by or against the pledgor or with respect to the pledgor), other than Interest Payments on the Notes and any other income or distributions in respect of any Notes, Pledged Applicable Ownership Interests in the Treasury Portfolio or the Permitted Investments that Holders are entitled to receive pursuant to Section 4.01(a); and (iii) all powers and rights now owned or hereafter acquired under or with respect to the Collateral.

"**Collateral Account**" means the securities account of the Collateral Agent, maintained on the books of the Securities Intermediary and designated "H2O America Collateral Account", or any successor securities account of a successor Collateral Agent.

"**Collateral Agent**" means the Person named as "Collateral Agent" in the first paragraph of this Agreement, acting in its capacity as such hereunder, until a successor Collateral Agent shall have become such pursuant to this Agreement, and thereafter "Collateral Agent" shall mean the Person who is then the Collateral Agent hereunder.

"**collateral event of default**" has the meaning set forth in Section 13.01(b).

"**Collateral Substitution**" means (i) with respect to the Corporate Units, the substitution of the Pledged Applicable Ownership Interests in Notes included in such Corporate Units with Treasury Securities in an aggregate principal amount at maturity equal to the aggregate principal amount of such Pledged Applicable Ownership Interests in Notes, or (ii) with respect to the Treasury Units, the substitution of the Pledged Treasury Securities included in such Treasury Units with an equal amount of the Notes having a total aggregate principal amount equal to the aggregate principal amount at stated maturity of the Pledged Treasury Securities.

"**Common Stock**" means the common stock of the Company, par value $0.001 per share (as of the date hereof), subject to Section 5.05(b)(i).

"**Company**" means the Person named as the "Company" in the first paragraph of this Agreement until a successor shall have become such pursuant to the applicable provision of this Agreement, and thereafter "Company" shall mean such successor.

"**Compounded Contract Adjustment Payments**" has the meaning set forth in Section 5.12(a).

"**Constituent Person**" has the meaning set forth in Section 5.05(b)(i).

"**Contract Adjustment Payment Date**" means February 1, May 1, August 1 and November 1 of each year, commencing on February 1, 2027.

"**Contract Adjustment Payments**" means amounts payable by the Company on each Contract Adjustment Payment Date in respect of each Purchase Contract, at a rate per year of 2.450% on the Stated Amount per Purchase Contract.

"**Corporate Trust Office**" means the designated office of the Purchase Contract Agent, the Collateral Agent, the Custodial Agent or the Securities Intermediary, as applicable, at which at any time its corporate trust business shall be administered, which office at the date hereof is located at U.S. Bank Trust Company, National Association, CityPlace I, 185 Asylum Street, 27th Floor, Hartford, CT 06103, Attention: Global Corporate Trust, and such office shall include the office or agency of the Purchase Contract Agent, the Collateral Agent, the Custodial Agent or the Securities Intermediary, as applicable, located at 111 Fillmore Avenue, St. Paul, MN 55017, or such other address as the Purchase Contract Agent, the Collateral Agent, the Custodial Agent or the Securities Intermediary, as applicable, may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Purchase Contract Agent, Collateral Agent, Custodial Agent or Securities Intermediary, as applicable, as designated by written notice to the Holders and the Company (or such other address as such successor Purchase Contract Agent, Collateral Agent, Custodial Agent or Securities Intermediary, as applicable, may designate from time to time by notice to the Holders and the Company), which office must be located in the continental United States of America.

"**Corporate Unit**" means the collective rights and obligations of a Holder of a Corporate Units Certificate in respect of the Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, subject in each case to the Pledge thereof (except that the portion of the Applicable Ownership Interests in the Treasury Portfolio as defined in clause (ii) of the definition thereof shall not be subject to the Pledge) and the related Purchase Contract.

"**Corporate Units Certificate**" means a certificate evidencing the rights and obligations of a Holder in respect of the number of Corporate Units specified on such certificate.

"**Current Market Price**":

(i) for purposes of Section 5.05(a)(ii) and (iv) (except with respect to Spin-Offs), means, in respect of a share of Common Stock or any other security on any day of determination, the average VWAP of the Common Stock or such other security on the principal U.S. securities exchange or quotation system on which the Common Stock or such other security, as applicable, is listed or quoted at that time for the 10 consecutive Trading Days preceding the earlier of the Trading Day preceding the day in question and the Trading Day before the Ex-Date with respect to the issuance or distribution requiring such computation;

(ii) for purposes of Section 5.05(a)(v), means, in respect of a share of the Common Stock, the Closing Price of the Common Stock on the Trading Day immediately preceding the Ex-Date for the relevant cash dividend or distribution; and

(iii) for purposes of Section 5.05(a)(vi), means, in respect of a share of the Common Stock, the Closing Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to the relevant tender offer or exchange offer.

"**Custodial Agent**" means the Person named as Custodial Agent in the first paragraph of this Agreement, acting in its capacity as such hereunder, until a successor Custodial Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter "Custodial Agent" shall mean the Person who is then the Custodial Agent hereunder.

"**Depository**" means a clearing agency registered under Section 17A of the Exchange Act that is designated to act as Depository for the Units as contemplated by Sections 3.06 and 3.08.

"**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 and pledges of securities deposited with the Depository.

"**DTC**" means The Depository Trust Company.

"**Early Settlement**" has the meaning set forth in Section 5.08(a).

"**Early Settlement Amount**" has the meaning set forth in Section 5.08(b).

"**Early Settlement Date**" has the meaning set forth in Section 5.08(b).

"**Effective Date**" has the meaning set forth in Section 5.05(b)(iii).

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"**Event of Default**" has the meaning set forth in the Indenture.

"**Ex-Date**," with respect to any issuance or distribution on the Common Stock or any other security, means the first date on which the Common Stock or such other security, as applicable, trades, regular way, on the principal U.S. securities exchange or quotation system on which the Common Stock or such other security, as applicable, is listed or quoted at that time, without the right to receive such issuance or distribution.

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

"**Exchange Property Unit**" has the meaning set forth in Section 5.05(b)(i).

"**Expiration Date**" has the meaning set forth in Section 1.04(e).

"**Expiration Time**" has the meaning set forth in Section 5.05(a)(vi).

"**Extension Period**" has the meaning set forth in Section 5.12(a).

"**Failed Final Remarketing**" has the meaning set forth in Section 5.02(b)(ix).

"**Failed Optional Remarketing**" has the meaning set forth in Section 5.02(a)(x).

"**Failed Remarketing**" means, as applicable, a Failed Optional Remarketing or a Failed Final Remarketing.

"**Fair Market Value**" has the meaning set forth in Section 5.05(a)(iv).

"**Final Remarketing**" means any Remarketing of the Notes that occurs during the Final Remarketing Period by the Remarketing Agent pursuant to the Remarketing Agreement.

"**Final Remarketing Date**" means the date the Company prices the Notes offered in the Final Remarketing.

"**Final Remarketing Period**" means the ten (10) Business Day period ending on, and including, the third Business Day immediately preceding the Purchase Contract Settlement Date.

"**Fixed Settlement Rates**" means the Minimum Settlement Rate and the Maximum Settlement Rate, collectively.

"**Fundamental Change**" will be deemed to have occurred if any of the following occurs:

(i) except in connection with transactions described in clause (ii), a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Company, its direct or indirect Wholly Owned Subsidiaries and the employee benefit plans of the Company and its direct or indirect Wholly Owned Subsidiaries, has become, and files a Schedule TO (or any successor schedule, form or report) or any schedule, form or report under the Exchange Act that discloses that such "person" or "group" has become, the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of shares of the Common Stock representing more than 50% of the voting power of the Common Stock, unless such beneficial ownership arises solely as a result of a revocable proxy delivered in response to a public proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act and is not also then reportable on Schedule 13D or Schedule 13G (or any successor schedule) under the Exchange Act regardless of whether such a filing has actually been made; *provided* that no "person" or "group" shall be deemed to be the beneficial owner of any securities tendered pursuant to a tender or exchange offer made by or on behalf of such "person" or "group" until such tendered securities are accepted for purchase or exchange under such offer;

(ii) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than a change to par value, or from par value to no par value, or 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 or more of the Company's direct or indirect Subsidiaries;

(iii) the Common Stock (or other common stock underlying the Purchase Contracts) ceases to be listed or quoted on any of The New York Stock Exchange, the Nasdaq Global Select Market, the Nasdaq Global Market or The Texas Stock Exchange (or any of their respective successors) unless the Common Stock has been accepted or admitted for trading on another of such exchanges; or

(iv) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company;

provided that a transaction or transactions described in clause (ii) above will not constitute a Fundamental Change if at least 90% of the consideration received or to be received by the Company's common stockholders, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any of The New York Stock Exchange, the Nasdaq Global Select Market, the Nasdaq Global Market or The Texas Stock Exchange (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions the Purchase Contracts relate to such consideration, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights. If any transaction in which the Common Stock is replaced by the common stock or other common equity of another entity occurs, following the completion of the related Fundamental Change Exercise Period, references to the Company in this "Fundamental Change" definition shall instead be references to such other entity.

"**Fundamental Change Early Settlement**" has the meaning set forth in Section 5.05(b)(ii).

"**Fundamental Change Early Settlement Date**" has the meaning set forth in Section 5.05(b)(ii).

"**Fundamental Change Early Settlement Right**" has the meaning set forth in Section 5.05(b)(ii).

"**Fundamental Change Exercise Period**" has the meaning set forth in Section 5.05(b)(ii).

"**Global Certificate**" means a Certificate that evidences all or part of the Units and is registered in the name of the Depository or a nominee thereof.

"**Hague Securities Convention**" means the Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary, July 5, 2006, 17 U.S.T. 401, 46 I.L.M. 649.

"**Holder**" means, with respect to a Unit, the Person in whose name the Unit evidenced by a Certificate is registered in the Security Register; *provided*, however, that solely for the purpose of determining whether the Holders of the requisite number of Units have voted on any matter (and not for any other purpose hereunder), if the Unit remains in the form of one or more Global Certificates and if the Depository that is the registered holder of such Global Certificate has sent an omnibus proxy assigning voting rights to the Depository Participants to whose accounts the Units are credited on the record date, the term "Holder" shall mean such Depository Participant acting at the direction of the Beneficial Owners.

"**Increased Principal Amount**" has the meaning set forth in Section 3.05.

"**Indemnitees**" has the meaning set forth in Section 7.07(c).

"**Indenture**" means the Base Indenture, as heretofore amended and supplemented and as further amended and supplemented by the Supplemental Indenture, as it may be further amended and/or supplemented from time to time.

"**Initial Public Offering**" has the meaning set forth in Section 5.05(a)(iv).

"**Interest Payment**" has the meaning set forth in the Supplemental Indenture.

"**Interest Payment Date**" has the meaning set forth in the Supplemental Indenture.

"**Issuer Order**" or "**Issuer Request**" means a written order or request signed in the name of the Company by an Authorized Officer of the Company, and delivered to the Purchase Contract Agent.

"**Losses**" has the meaning set forth in Section 15.08(b).

"**Make-Whole Shares**" has the meaning set forth in Section 5.05(b)(ii).

"**Market Disruption Event**" has the meaning set forth in Section 5.01(a).

"**Market Value Averaging Period**" has the meaning set forth in Section 5.01(a).

"**Maximum Settlement Rate**" has the meaning set forth in Section 5.01(a)(iii).

"**Merger Common Stock**" has the meaning set forth in Section 5.05(b)(i).

"**Merger Valuation Percentage**" means, with respect to any Reorganization Event:

(i) if the Merger Common Stock is listed, quoted or traded on any securities exchange or quotation system during the Merger Valuation Period, a percentage equal to (x) the arithmetic average of the Closing Prices of one share of such Merger Common Stock over the relevant Merger Valuation Period (determined as if references to "Common Stock" in the definition of "Closing Price" were references to such Merger Common Stock), *divided by* (y) the arithmetic average of the Closing Prices of one share of Common Stock over the relevant Merger Valuation Period; and

(ii) otherwise, a percentage equal to (x) the Closing Price of one share of such Merger Common Stock (determined as if references to "Common Stock" in the definition of "Closing Price" were references to such Merger Common Stock), *divided by* (y) the value of one Exchange Property Unit (determined pursuant to Section 5.05(b)(i)), in each case, as of the effective date of such Reorganization Event (or, if such effective date is not a Trading Day, the immediately succeeding Trading Day).

"**Merger Valuation Period**" for any Reorganization Event means the five consecutive Trading Day period immediately preceding, but excluding, the effective date for such Reorganization Event.

"**Minimum Settlement Rate**" has the meaning set forth in Section 5.01(a)(i).

"**Minimum Stock Price**" has the meaning set forth in Section 5.05(b)(iii).

"**Notes**" means the Company's Remarketable Senior Notes due November 1, 2031 issued pursuant to the Supplemental Indenture.

"**Obligations**" means, with respect to each Holder, the obligation of such Holder under such Holder's Unit (including the Purchase Contract contained therein) and this Agreement to pay the Purchase Price with respect to each Purchase Contract being settled, whether pursuant to an Early Settlement or a Fundamental Change Early Settlement or on the Purchase Contract Settlement Date.

"**Officer's Certificate**" means a certificate signed by an Authorized Officer of the Company and delivered to the Purchase Contract Agent, the Collateral Agent, the Custodial Agent or the Securities Intermediary, as applicable. Any Officer's Certificate delivered with respect to compliance with a condition or covenant provided for in this Agreement (other than the Officer's Certificate provided for in Section 10.05) shall include the information set forth in Section 1.02.

"**Opinion of Counsel**" means a written opinion of counsel which is acceptable to the Purchase Contract Agent and which counsel may be counsel to the Company (and who may be an employee of the Company or any of its Affiliates). An opinion of counsel may rely on certificates as to matters of fact.

"**Optional Remarketing**" means any Remarketing of the Notes that occurs during an Optional Remarketing Period by the Remarketing Agent pursuant to the Remarketing Agreement.

"**Optional Remarketing Date**" means the date the Company prices the Notes offered in an Optional Remarketing.

"**Optional Remarketing Period**" has the meaning set forth in Section 5.02(a).

"**Optional Remarketing Settlement Date**" means the Remarketing Settlement Date with respect to a Successful Optional Remarketing.

"**Outstanding**" means, as of any date of determination, all Units evidenced by Certificates theretofore authenticated, executed and delivered under this Agreement, except:

(i) all Units, if a Termination Event has occurred;

(ii) Units evidenced by Certificates 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 (iii) Units evidenced by Certificates in exchange for or in lieu of which other Certificates have been authenticated, executed on behalf of the Holder and delivered pursuant to this Agreement, other than any such Certificate in respect of which there shall have been presented to the Purchase Contract Agent proof satisfactory to it that such Certificate is held by a protected purchaser in whose hands the Units evidenced by such Certificate are valid obligations of the Company; *provided*, however, that in determining whether the Holders of the requisite number of the Units have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Units owned by the Company or any Affiliate of the Company shall be disregarded and deemed not to be Outstanding Units, except that, in determining whether the Purchase Contract Agent shall be authorized and protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Units that a Responsible Officer of the Purchase Contract Agent actually knows to be so owned shall be so disregarded. Units so owned that have been pledged in good faith may be regarded as Outstanding Units if the pledgee establishes to the satisfaction of the Purchase Contract Agent the pledgee's right so to act with respect to such Units and that the pledgee is not the Company or any Affiliate of the Company. For the avoidance of doubt, a Purchase Contract shall be considered "**Outstanding**" if the Unit containing such Purchase Contract is Outstanding.

"**Paying Agent**" has the meaning set forth in the Indenture.

"**Payment Date**" means each February 1, May 1, August 1 and November 1 of each year, commencing on February 1, 2027.

"**Period for Optional Remarketing**" means the period beginning on, and including, April 27, 2029 (the second Business Day immediately preceding the May 1, 2029 Interest Payment Date) and ending on, and including, October 5, 2029 (the sixth Business Day immediately preceding the first day of the Final Remarketing Period).

"**Permitted Investments**" means any one of the following, in each case maturing on the Business Day following the date of acquisition:

(i) any evidence of indebtedness with an original maturity of 365 days or less issued, or directly and fully guaranteed or insured, by the United States of America or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States of America is pledged in support of the timely payment thereof or such indebtedness constitutes a general obligation of it);

(ii) deposits, demand deposits, certificates of deposit or acceptances with an original maturity of 365 days or less of any institution which is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than $500 million at the time of deposit (and which may include the Collateral Agent);

(iii) investments with an original maturity of 365 days or less of any Person that are fully and unconditionally guaranteed by a bank referred to in clause (ii) of this definition;

(iv) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America or issued by any agency thereof and backed as to timely payment by the full faith and credit of the United States of America;

(v) investments in commercial paper, other than commercial paper issued by the Company or its Affiliates, of any corporation incorporated under the laws of the United States or any State thereof, which commercial paper has a rating at the time of purchase at least equal to "A-1" by S&P Global Ratings Inc. ("**S&P**") or at least equal to "P-1" by Moody's Investors Service, Inc. ("**Moody's**"); and

(vi) investments in money market funds (including, but not limited to, money market funds managed by the Collateral Agent or an Affiliate of the Collateral Agent) registered under the Investment Company Act of 1940, as amended, rated in the highest applicable rating category by S&P or Moody's.

Obligations issued by the Purchase Contract Agent or any of its Affiliates shall qualify as Permitted Investments if they otherwise fall under the categories described above. Notwithstanding the foregoing, Permitted Investments shall be limited to those instruments readily obtainable and routinely offered by the Purchase Contract Agent. Permitted Investments may include investments for which the Collateral Agent or its Affiliates serve as manager, investment advisor, administrator, shareholder, servicing agent and/or custodian or sub-custodian and for which the Collateral Agent may receive fees.

"**Person**" means any individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization or any government or any political subdivision, instrumentality or agency thereof.

"**Plan**" means (i) an employee benefit plan within the meaning of Section 3(3) of ERISA that is subject to Title I of ERISA, (ii) a plan, individual retirement account or other arrangement that is subject to Section 4975 of the Code or any applicable Similar Law, or (iii) any entity whose underlying assets are considered to include the assets of any of the foregoing described in clause (i) and (ii) pursuant to ERISA or otherwise.

"**Pledge**" means the lien and security interest in the Collateral created by this Agreement.

"**Pledge Indemnitees**" has the meaning set forth in Section 15.08(b).

"**Pledged Applicable Ownership Interests in Notes**" means the portion of the Applicable Ownership Interests in Notes and security entitlements with respect thereto from time to time credited to the Collateral Account and not then released from the Pledge.

"**Pledged Applicable Ownership Interests in the Treasury Portfolio**" means the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of such term) and security entitlements with respect thereto from time to time credited to the Collateral Account and not then released from the Pledge.

"**Pledged Note**" has the meaning set forth in Section 3.05.

"**Pledged Treasury Securities**" means Treasury Securities and security entitlements with respect thereto from time to time credited to the Collateral Account and not then released from the Pledge.

"**Predecessor Certificate**" means a Predecessor Corporate Units Certificate or a Predecessor Treasury Units Certificate.

"**Predecessor Corporate Units Certificate**" of any particular Corporate Units Certificate means every previous Corporate Units Certificate evidencing all or a portion of the rights and obligations of the Company and the Holder under the Corporate Units evidenced thereby; and, for the purposes of this definition, any Corporate Units Certificate authenticated and delivered under Section 3.10 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Corporate Units Certificate shall be deemed to evidence the same rights and obligations of the Company and the Holder as the mutilated, destroyed, lost or stolen Corporate Units Certificate.

"**Predecessor Treasury Units Certificate**" of any particular Treasury Units Certificate means every previous Treasury Units Certificate evidencing all or a portion of the rights and obligations of the Company and the Holder under the Treasury Units evidenced thereby; and, for the purposes of this definition, any Treasury Units Certificate authenticated and delivered under Section 3.10 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Treasury Units Certificate shall be deemed to evidence the same rights and obligations of the Company and the Holder as the mutilated, destroyed, lost or stolen Treasury Units Certificate.

"**Pro Rata**" or "**pro rata**" shall mean, unless otherwise specified, pro rata to each Holder according to the aggregate number of the Units held by such Holder in relation to the aggregate number of all Units Outstanding.

"**Proceeding**" has the meaning set forth in Section 5.11(d).

"**Proceeds**" has the meaning ascribed thereto in the UCC and includes, without limitation, all interest, dividends, Cash, instruments, securities, financial assets and other property received, receivable or otherwise distributed upon the sale (including, without limitation, any Remarketing), exchange, collection or disposition of any financial assets from time to time credited to the Collateral Account.

"**Prospectus**" means the prospectus relating to the shares or any securities deliverable in connection with an Early Settlement pursuant to Section 5.08 or a Fundamental Change Early Settlement of Purchase Contracts pursuant to Section 5.05(b)(ii), in the form in which first filed, or transmitted for filing, with the Securities and Exchange Commission after the effective date of the Registration Statement pursuant to Rule 424(b) under the Securities Act, including the documents incorporated by reference therein as of the date of such Prospectus.

"**Purchase Contract**" means, with respect to any Unit, the contract forming a part of such Unit and obligating the Company to (i) sell, and the Holder of such Unit to purchase (with settlement on the Purchase Contract Settlement Date, unless a Termination Event, an Early Settlement Date or a Fundamental Change Early Settlement has previously occurred), a number of shares of Common Stock equal to the applicable Settlement Rate, and (ii) pay to the Holder thereof Contract Adjustment Payments, subject to the Company's right to defer Contract Adjustment Payments pursuant to Section 5.12, in each case, on the terms and subject to the conditions set forth in Article V. Unless the context otherwise requires, any reference herein (x) to a Purchase Contract shall be deemed to refer to a Purchase Contract with a stated amount equal to the Stated Amount, or (y) to a particular number of Purchase Contracts shall be deemed to refer to Purchase Contract(s) with a stated amount equal to the product of such number and the Stated Amount.

"**Purchase Contract Agent**" means the Person named as the "Purchase Contract Agent" in the first paragraph of this Agreement, acting in its capacity as such hereunder, until a successor Purchase Contract Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter "Purchase Contract Agent" shall mean such Person or any subsequent successor who is appointed pursuant to this Agreement. For the avoidance of doubt, the Purchase Contract Agent shall also serve as paying agent, Securities Registrar, and transfer agent as required hereunder.

"**Purchase Contract Settlement Date**" means November 1, 2029 (or if such day is not a Business Day, the following Business Day).

"**Purchase Contract Settlement Fund**" has the meaning set forth in Section 5.04.

"**Purchase Price**" has the meaning set forth in Section 5.01(a).

"**Put Price**" has the meaning set forth in the Supplemental Indenture.

"**Put Right**" has the meaning set forth in the Supplemental Indenture.

"**Quotation Agent**" means any primary United States government securities dealer in New York City selected by the Company.

"**ranking junior to the CAP Obligations**" means, with respect to any obligation of the Company, that such obligation (a) ranks junior to, and not equally with or prior to, the CAP Obligations (or any other obligations of the Company ranking on a parity with the CAP Obligations) in right of payment upon the happening of any event of the kind specified in the first sentence of the second paragraph of Section 5.11(d) or (b) is specifically designated as ranking junior to the CAP Obligations (or any other obligations of the Company ranking on a parity with the CAP Obligations) by express provision in the instrument creating or evidencing such obligation. The securing of any obligations of the Company, otherwise ranking junior to the CAP Obligations (or any other obligations of the Company ranking on a parity with the CAP Obligations), shall be deemed to prevent such obligations from constituting obligations ranking junior to the CAP Obligations (or any other obligations of the Company ranking on a parity with the CAP Obligations).

"**ranking on a parity with the CAP Obligations**" means, with respect to any obligation of the Company, that such obligation (a) ranks equally with and not prior to the CAP Obligations (or any other obligations of the Company ranking on a parity with the CAP Obligations) in right of payment upon the happening of any event of the kind specified in the first sentence of the second paragraph of Section 5.11(d) or (b) is specifically designated as ranking on a parity with the CAP Obligations (or any other obligations of the Company ranking on a parity with the CAP Obligations) by express provision in the instrument creating or evidencing such obligation. The securing of any obligations of the Company, otherwise ranking on a parity with the CAP Obligations (or any other obligations of the Company ranking on a parity with the CAP Obligations), shall not be deemed to prevent such obligations from constituting obligations ranking on a parity with the CAP Obligations (or any other obligations of the Company ranking on a parity with the CAP Obligations).

"**Record Date**" for any distribution and any Contract Adjustment Payment and any deferred Contract Adjustment Payment (and any Compounded Contract Adjustment Payment thereon) payable on any Contract Adjustment Payment Date means the 15th day of the calendar month immediately preceding the calendar month in which the relevant distribution date or Contract Adjustment Payment Date falls (whether or not a Business Day); *provided*, that if held by a securities depository in book-entry form, the Record Date will be the close of business on the Business Day immediately preceding the applicable distribution date or Contract Adjustment Payment Date.

"**Reduced Principal Amount**" has the meaning set forth in Section 3.05.

"**Reference Dividend**" has the meaning set forth in Section 5.05(a)(v).

"**Reference Price**" has the meaning set forth in Section 5.01(a)(ii).

"**Registration Statement**" means a registration statement under the Securities Act prepared by the Company covering, inter alia, the securities deliverable by the Company in connection with an Early Settlement on the applicable Settlement Date under Section 5.08 or a Fundamental Change Early Settlement on the Fundamental Change Early Settlement Date under Section 5.05(b)(ii), including all exhibits thereto and the documents incorporated by reference in the prospectus contained in such registration statement, and any post-effective amendments thereto.

"**Released Note**" has the meaning set forth in Section 3.05.

"**Remarketing**" means any remarketing of the Notes pursuant to the Remarketing Agreement.

"**Remarketing Agent**" has the meaning set forth in the Supplemental Indenture.

"**Remarketing Agreement**" means the Remarketing Agreement, in substantially the form set forth in Exhibit P, to be entered into among the Company, the Purchase Contract Agent and the Remarketing Agent, as the same may be amended, amended and restated, supplemented or otherwise modified or replaced from time to time.

"**Remarketing Date**" means each of the Business Days selected for Remarketing in an Optional Remarketing Period or the Final Remarketing Period.

"**Remarketing Fee**" means, in the event of a Successful Remarketing, a remarketing fee paid to the Remarketing Agent to be agreed upon in writing by the Company and the Remarketing Agent prior to any such Remarketing pursuant to the Remarketing Agreement.

"**Remarketing Price**" means (i) in the case of an Optional Remarketing, 100% of the aggregate of the Treasury Portfolio Purchase Price and the Separate Notes Purchase Price; and (ii) in the case of a Final Remarketing, 100% of the aggregate principal amount of Notes underlying the Pledged Applicable Ownership Interests in Notes (other than any such Notes that are not remarketed in such Final Remarketing, pursuant to Section 5.03) and Separate Notes to be remarketed.

"**Remarketing Price Per Note**" means, with respect to any Optional Remarketing, for each $1,000 principal amount of Notes, an amount in Cash equal to the quotient of (i) the portion of the Treasury Portfolio Purchase Price attributable to the components of the Treasury Portfolio specified in clauses (i) and (ii) or (iii) of the definition of such term *divided by* (ii) (a) the aggregate principal amount of Notes underlying the Pledged Applicable Ownership Interests in Notes that are held as components of Corporate Units and remarketed in such Optional Remarketing *divided by* (b) $1,000.

"**Remarketing Settlement Date**" means (i) in the case of a Successful Optional Remarketing, (x) if the remarketed Notes are priced before 4:30 p.m., New York City time, on the Optional Remarketing Date for such Successful Optional Remarketing, the second Business Day immediately following such Optional Remarketing Date and (y) otherwise, the third Business Day following the relevant Optional Remarketing Date, and (ii) in the case of a Final Remarketing, the Purchase Contract Settlement Date.

"**Reorganization Event**" means:

(i) any recapitalization, reclassification or change of the Common Stock (other than a change to par value, or from par value to no par value, or changes resulting from a subdivision or combination);

(ii) any consolidation, merger, combination or similar transaction involving the Company;

(iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries substantially as an entirety; or

(iv) any statutory share exchange,

in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof).

"**Reset Rate**" means, in connection with each Remarketing, the rate per annum (as determined by the Remarketing Agent in consultation with the Company pursuant to the Remarketing Agreement) rounded to the nearest one thousandth (0.001) of one percent that the Notes shall bear as determined by the Remarketing Agent in consultation with the Company pursuant to the Remarketing Agreement. For the avoidance of doubt, the Company will have a Reset Rate be a fixed rate.

"**Responsible Officer**" means, when used with respect to any Agent, any officer of such Agent assigned to Global Corporate Trust (or any successor unit, department or division of such Agent) of such Agent located at the Corporate Trust Office of such Agent who has direct responsibility for the administration of this Agreement and also means, with respect to a particular corporate trust matter, any other officer, trust officer or person performing similar functions to whom such matter is referred because of his or her knowledge of and familiarity of the particular subject and who shall have direct responsibility for this Agreement.

"**Rights**" has the meaning set forth in Section 5.05(a)(x).

"**Scheduled Trading Day**" means any day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed trading. If the Common Stock is not so listed, "**Scheduled Trading Day**" means a Business Day.

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

"**Securities Intermediary**" means the Person named as Securities Intermediary in the first paragraph of this Agreement, acting in its capacity as such hereunder, until a successor Securities Intermediary shall have become such pursuant to the applicable provisions of this Agreement, and thereafter "Securities Intermediary" shall mean such successor or any subsequent successor.

"**Security Register**" and "**Securities Registrar**" have the respective meanings set forth in Section 3.05.

"**Separate Notes**" means the Notes that have been released from the Pledge pursuant to the terms hereof and therefore no longer underlie Corporate Units.

"**Separate Notes Account**" has the meaning set forth in Section 5.02(a)(vi).

"**Separate Notes Purchase Price**" means, for any Optional Remarketing, the amount in Cash equal to the product of (A) the Remarketing Price Per Note and (B) (x) the aggregate principal amount of Separate Notes remarketed in such Optional Remarketing *divided by* (y) $1,000.

"**Settlement Date**" means, as applicable, (i) the Purchase Contract Settlement Date, (ii) the second Business Day following the Early Settlement Date or (iii) the Fundamental Change Early Settlement Date.

"**Settlement Rate**" has the meaning set forth in Section 5.01(a).

"**Similar Laws**" means the provisions under any federal, state, local, non-U.S. laws or regulations that are similar to Title I of ERISA or Section 4975 of the Code.

"**Solicitation Agent**" has the meaning set forth in Section 4.03.

"**Spin-Off**" has the meaning set forth in Section 5.05(a)(iv).

"**Stated Amount**" means $50.00.

"**Stock Price**" has the meaning set forth in Section 5.05(b)(iii).

"**Subjected Note**" has the meaning set forth in Section 3.05.

"**Subsidiary**" means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of capital stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

"**Successful Final Remarketing**" has the meaning set forth in Section 5.02(b)(v).

"**Successful Optional Remarketing**" has the meaning set forth in Section 5.02(a)(vi).

"**Successful Remarketing**" means, as applicable, a Successful Optional Remarketing or a Successful Final Remarketing.

"**Supplemental Indenture**" means the First Supplemental Indenture to the Base Indenture, dated as of November 3, 2026, pursuant to which the Notes are issued, as it may be further amended and/or supplemented from time to time.

"**Term Sheet**" means the pricing term sheet related to the offering of the Units, dated October 29, 2026, as filed with the Securities and Exchange Commission as a "free writing prospectus" on October 30, 2026.

"**Termination Date**" means the date, if any, on which a Termination Event occurs.

"**Termination Event**" means the occurrence of any of the following events:

(i) at any time on or prior to the Purchase Contract Settlement Date, a decree or order by a court having jurisdiction in the premises shall have been entered adjudicating the Company bankrupt or insolvent, or approving as properly filed a petition seeking reorganization arrangement, adjustment or composition of or in respect of the Company under the Bankruptcy Code or any other similar applicable federal or state law and such decree or order shall have been entered more than 90 days prior to the Purchase Contract Settlement Date and shall have continued undischarged and unstayed for a period of 90 consecutive days;

(ii) at any time on or prior to the Purchase Contract Settlement Date, a decree or order of a court having jurisdiction in the premises shall have been entered for the appointment of a receiver, liquidator, trustee, assignee, sequestrator or other similar official in bankruptcy or insolvency of the Company or of all or any substantial part of the Company's property, or for the winding up or liquidation of the Company's affairs, and such decree or order shall have been entered more than 90 days prior to the Purchase Contract Settlement Date and shall have continued undischarged and unstayed for a period of 90 consecutive days; or (iii) at any time on or prior to the Purchase Contract Settlement Date, the Company shall institute proceedings to be adjudicated bankrupt or insolvent, or shall consent to the institution of bankruptcy or insolvency proceedings against it, or shall file a petition or answer or consent seeking reorganization under the Bankruptcy Code or any other similar applicable federal or state law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver, liquidator, trustee, assignee, sequestrator or other similar official of the Company or of all or any substantial part 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.

"**Threshold Appreciation Price**" means $68.8231 (which is equal to $50 divided by the Minimum Settlement Rate, such quotient being rounded to the nearest $0.0001), subject to adjustment as set forth in Section 5.05(a)(vii)(1).

"**TIA**" means the Trust Indenture Act of 1939, as amended from time to time, or any successor legislation.

"**TRADES**" means the Treasury/Reserve Automated Debt Entry System maintained by the Federal Reserve Bank of New York pursuant to the TRADES Regulations.

"**TRADES Regulations**" means the regulations of the United States Department of the Treasury, published at 31 C.F.R. Part 357, as amended from time to time. Unless otherwise defined herein, all terms defined in the TRADES Regulations are used herein as therein defined.

"**Trading Day**" has the meaning set forth in Section 5.01(a).

"**Transfer**" means (i) in the case of certificated securities in registered form, delivery as provided in Section 8-301(a) of the UCC, indorsed to the transferee or in blank by an effective indorsement; (ii) in the case of Treasury Securities, registration of the transferee as the owner of such Treasury Securities on TRADES; (iii) in the case of security entitlements, including, without limitation, security entitlements with respect to Treasury Securities or Notes, a securities intermediary indicating by book entry that such security entitlement has been credited to the transferee's securities account; and (iv) in the case of Notes in registered form, in the manner contemplated by Section 2.03(a) of the Supplemental Indenture and Section 303 of the Base Indenture.

"**Treasury Portfolio**" means:

(i) U.S. Treasury securities (or principal or interest strips thereof) that mature on or prior to the Purchase Contract Settlement Date in an aggregate amount at maturity equal to the principal amount of the Notes underlying Applicable Ownership Interests in Notes included in the Corporate Units on the Optional Remarketing Date;

(ii) if the Optional Remarketing Settlement Date occurs prior to August 1, 2029, with respect to the originally-scheduled quarterly Interest Payment Dates on the Notes that would have occurred on August 1, 2029 and the Purchase Contract Settlement Date, U.S. Treasury securities (or principal or interest strips thereof) that mature on or prior to (i) August 1, 2029 (in connection with the Interest Payment Date that would have occurred on August 1, 2029) and (ii) November 1, 2029 (in connection with the Interest Payment Date that would have occurred on the Purchase Contract Settlement Date), each in an aggregate amount at maturity equal to the aggregate Interest Payments (assuming no reset of the interest rate) that would have been paid to the Holders of the Corporate Units on August 1, 2029 and the Purchase Contract Settlement Date, respectively, on the principal amount of the Notes underlying the Applicable Ownership Interests in Notes included in the Corporate Units on the Optional Remarketing Date; and

(iii) if the Optional Remarketing Settlement Date occurs on or after August 1, 2029, U.S. Treasury securities (or principal or interest strips thereof) that mature on or prior to the Purchase Contract Settlement Date in an aggregate amount at maturity equal to the aggregate Interest Payment (assuming no reset of the interest rate) that would have been paid to the Holders of the Corporate Units on the Purchase Contract Settlement Date on the principal amount of the Notes underlying the Applicable Ownership Interests in Notes included in the Corporate Units on the Optional Remarketing Date;

provided that if on the Optional Remarketing Date U.S. Treasury securities (or principal or interest strips thereof) that are to be included in the Treasury Portfolio have a yield that is less than zero, "Treasury Portfolio" means Cash in an amount equal to (i) the principal amount of the Notes underlying Applicable Ownership Interests in Notes included in the Corporate Units on the Optional Remarketing Date and (ii) the aggregate Interest Payments (assuming no reset of the interest rate) that would have been paid to the Holders of the Corporate Units as provided in clauses (ii) and (iii), on the principal amount of the Notes underlying the Applicable Ownership Interests in Notes included in the Corporate Units on the Optional Remarketing Date.

"**Treasury Portfolio Purchase Price**" means, for purposes of a Successful Optional Remarketing, the lowest aggregate ask-side price quoted by a primary U.S. government securities dealer in New York City to the Quotation Agent between 9:00 a.m. and 4:00 p.m., New York City time, on the Optional Remarketing Date for the purchase of the Treasury Portfolio for settlement on the Optional Remarketing Settlement Date; *provided* that if the Treasury Portfolio consists of Cash, "Treasury Portfolio Purchase Price" means the amount thereof.

"**Treasury Securities**" means zero-coupon U.S. Treasury securities that mature on or prior to November 1, 2029 (including, without limitation, the U.S. Treasury securities with CUSIP No. 912821KA2, which matures on October 31, 2029).

"**Treasury Unit**" means, following the substitution of Treasury Securities for Pledged Applicable Ownership Interests in Notes as Collateral to secure a Holder's Obligations under the Purchase Contract, the collective rights and obligations of a Holder of a Treasury Units Certificate in respect of such Treasury Securities, subject to the Pledge thereof, and the related Purchase Contract.

"**Treasury Units Certificate**" means a certificate evidencing the rights and obligations of a Holder in respect of the number of Treasury Units specified on such certificate.

"**Trigger Event**" has the meaning set forth in Section 5.05(a)(iv).

"**Trustee**" means U.S. Bank Trust Company, National Association, as "Trustee" under the Indenture with respect to the Notes, or any successor thereto as set forth in the Indenture.

"**UCC**" means the Uniform Commercial Code as in effect in the State of New York from time to time.

"**Unit**" means a Corporate Unit or a Treasury Unit, as the case may be.

"**U.S. Bank**" has the meaning set forth in Section 7.14.

"**Vice President**" means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president."

"**VWAP**" has the meaning set forth in Section 5.01(a).

"**Wholly Owned Subsidiary**" means, with respect to any Person, any Subsidiary of such Person, except that, solely for purposes of this definition, the reference to "more than 50%" in the definition of "Subsidiary" shall be deemed replaced by a reference to "100%".

Section 1.02 *Compliance Certificates and Opinions*. Except as otherwise expressly provided by this Agreement, upon any written application or request by the Company to the Purchase Contract Agent to take any action in accordance with any provision of this Agreement, the Company shall furnish to the Purchase Contract Agent 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 certificate or opinion with respect to compliance with a condition or covenant provided for in this Agreement (other than the Officer's Certificate provided for in Section 10.05) shall include:

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

(ii) a statement that, in the opinion of each such individual, 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 condition or covenant has been complied with; and

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

Section 1.03 *Form of Documents Delivered to Purchase Contract Agent*. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents. Any certificate 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, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which its certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

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

Section 1.04 *Acts of Holders; Record Dates*. Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Agreement to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Purchase Contract Agent and, where it is hereby expressly required, to the Company.

Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "**Act**" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Agreement and (subject to Section 7.01) conclusive in favor of the Purchase Contract Agent and the Company, if made in the manner provided in this Section.

(a) The fact and date of the execution by any Person of any such instrument or writing may be proved in any manner that the Purchase Contract Agent deems sufficient.

(b) The ownership of Units shall be proved by the Security Register.

(c) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Unit shall bind every future Holder of the same Unit and the Holder of every Certificate evidencing such Unit issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Purchase Contract Agent or the Company in reliance thereon, whether or not notation of such action is made upon such Certificate.

(d) The Company may set any date as a record date for the purpose of determining the Holders of Outstanding Units 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. If any record date is set pursuant to this paragraph, the Holders of the Outstanding Corporate Units and the Outstanding Treasury Units, as the case may be, on such record date, and no other Holders, shall be entitled to take the relevant action with respect to the Corporate Units or the Treasury Units, as the case may be, whether or not such Holders remain Holders after such record date; *provided* that no such action shall be effective hereunder unless taken prior to or on the applicable Expiration Date by Holders of the requisite number of Outstanding Units on such record date. Nothing contained in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and be of no effect), and nothing contained in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite number of Outstanding Units on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Purchase Contract Agent in writing and to each Holder in the manner set forth in Section 1.06.

With respect to any record date set pursuant to this Section 1.04(e), the Company may designate any date as the "**Expiration Date**" and from time to time may change the Expiration Date to any later day; *provided* that no such change shall be effective unless notice of the proposed new Expiration Date is given to the Purchase Contract Agent in writing, and to each Holder in the manner set forth in Section 1.06, prior to or on the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section, the Company shall be deemed to have initially designated the 180th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the 180th day after the applicable record date.

Section 1.05 *Notices*. All notices, requests, consents and other communications provided for herein (including, without limitation, any modifications of, or waivers or consents under, this Agreement) shall be given or made in writing (including, without limitation, by unsecured email, if, except as provided in the following paragraph, promptly confirmed by telephone) mailed or delivered to the intended recipient at the "Address for Notices" specified below its name on the signature pages hereof or, as to any party, at such other address as shall be designated by such party in a notice to the other parties. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by electronic methods or personally delivered or mailed by first-class mail (registered or certified, return receipt requested) or overnight air courier guaranteeing next day delivery.

The Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary (collectively, the "**Agent**") agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail (in PDF format) or other similar unsecured electronic methods; *provided*, however, that (a) the party providing such written instructions or directions, subsequent to such transmission, shall provide the originally executed instructions or directions to the Agent in a timely manner, and (b) such originally executed instructions or directions shall be signed by an Authorized Officer (in the case of an instruction or direction from the Company) or an authorized representative of the party providing such instructions or directions. If the party elects to give the Agent e-mail instructions (or instructions by a similar electronic method) and the Agent acts upon such instructions or directions, the Agent's understanding of such instructions or directions, *vis-à-vis* such party, shall be deemed controlling. The Agent shall not be liable, *vis-à-vis* such party, for any losses, costs or expenses arising directly or indirectly from the Agent's reliance upon and compliance with such instructions or directions notwithstanding whether such instructions or directions conflict or are inconsistent with a subsequent written instruction or direction or an originally executed instruction or direction or the subsequent written instruction or direction is never received. All notices, approvals, consents, requests and any communications to the Agent hereunder must be in writing in English and must be in the form of a document that is signed manually or by way of an electronic signature (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other electronic signature provider acceptable to the Agent). The party providing electronic instructions to the Agent agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Agent, including without limitation the risk of the Agent acting on unauthorized instructions or directions, and the risk of interception and misuse by third parties.

Notwithstanding any other provision of this Agreement or any Certificate, where this Agreement or any Certificate provides for notice of any event or any other communication to a Holder of a Global Certificate (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depository (or its designee) pursuant to the standing instructions from the Depository or its designee, including by email in accordance with accepted practices at the Depository.

The Purchase Contract Agent (if other than the Trustee) shall send to the Trustee at the following address a copy of any notices in the form of Exhibits C, D, E, F, H, J, M, N or O it sends or receives:

U.S. Bank Trust Company, National Association, as Trustee

CityPlace I, 185 Asylum Street, 27th Floor, Hartford, CT 06103

Attention: Global Corporate Trust

Section 1.06 *Notice to Holders; Waiver*. Where this Agreement provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at its address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this 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 regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Purchase Contract Agent shall constitute a sufficient notification for every purpose hereunder.

Section 1.07 *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 1.08 *Successors and Assigns*. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary, and the Holders from time to time of the Units, by their acceptance of the same, shall be deemed to have agreed to be bound by the provisions hereof and to have ratified the agreements of, and the grant of the Pledge hereunder by, the Purchase Contract Agent.

Section 1.09 *Separability Clause*. In case any provision in this Agreement or in the Units 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 1.10 *Benefits of Agreement*. Nothing contained in this Agreement or in the Units, express or implied, shall give to any Person, other than (w) the parties hereto and their successors hereunder, (x) to the extent set forth in Section 5.11, the holders of senior indebtedness, (y) to the extent provided hereby, the Holders, and (z) to the extent set forth in Section 3.06, the Beneficial Owners, 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 Units evidenced by their Certificates by their acceptance of delivery of such Certificates.

Section 1.11 *Governing Law; Submission to Jurisdiction; Waiver of Jury Trial*. 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 (WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF). The Company, the Collateral Agent, the Custodial Agent, the Securities Intermediary and the Purchase Contract Agent hereby submit to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York state court sitting in the Borough of Manhattan in New York City for the purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. The Company, the Collateral Agent, the Custodial Agent, the Securities Intermediary and the Purchase Contract Agent irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Each of the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent, the Securities Intermediary and the Holders irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 1.12 *Legal Holidays*. In any case where any Contract Adjustment Payment Date shall not be a Business Day (notwithstanding any other provision of this Agreement or the Units), Contract Adjustment Payments, deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon), and other distributions shall not be paid on such date, but Contract Adjustment Payments, deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon), and other distributions shall be paid on the next succeeding Business Day; provided that no interest or other amounts shall accrue or be payable by the Company or to any Holder in respect of such delay.

In any case where the Purchase Contract Settlement Date or the Settlement Date relating to any Early Settlement Date or any Fundamental Change Early Settlement Date shall not be a Business Day (notwithstanding any other provision of this Agreement or the Units), Purchase Contracts shall not be performed and Early Settlement and Fundamental Change Early Settlement shall not be effected on such date, but Purchase Contracts shall be performed or Early Settlement or Fundamental Change Early Settlement shall be effected, as applicable, on the next succeeding Business Day with the same force and effect as if made on such Purchase Contract Settlement Date, the Settlement Date relating to such Early Settlement Date or such Fundamental Change Early Settlement Date, as applicable.

Section 1.13 *Counterparts*. This Agreement may be executed in any number of counterparts by the parties hereto, 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. The exchange of copies of this Agreement and of signature pages by electronic or PDF transmission shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes. Signatures of the parties hereto transmitted electronically or by PDF shall be deemed to be their original signatures for all purposes.

Section 1.14 *Inspection of Agreement*. Upon reasonable prior written notice, a copy of this Agreement shall be available at all reasonable times during normal business hours at the Corporate Trust Office for inspection by any Holder or Beneficial Owner.

Section 1.15 *Appointment of Financial Institution as Agent for the Company*. The Company may appoint a financial institution (which may be the Collateral Agent) to act as its agent in performing its obligations and in accepting and enforcing performance of the obligations of the Purchase Contract Agent and the Holders, under this Agreement and the Purchase Contracts, by giving notice of such appointment in the manner provided in Section 1.05. Any such appointment shall not relieve the Company in any way from its obligations hereunder.

Section 1.16 *No Waiver*. No failure on the part of the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent, the Securities Intermediary or any of their respective agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent, the Securities Intermediary or any of their respective agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

ARTICLE II
CERTIFICATE FORMS

Section 2.01 *Forms of Certificates Generally*. The Certificates shall be in substantially the form set forth in Exhibit A (in the case of Corporate Units Certificates) or Exhibit B (in the case of Treasury Units Certificates), 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 are listed or any Depository therefor, or as may, consistently herewith, be determined by the officers of the Company executing such Certificates, as evidenced by their execution of the Certificates.

The definitive Certificates shall be produced in any manner as determined by the officers of the Company executing the Units evidenced by such Certificates, consistent with the provisions of this Agreement, as evidenced by their execution thereof.

Every Global Certificate authenticated, executed on behalf of the Holders and delivered hereunder shall bear a legend substantially in the form set forth in Exhibit A and Exhibit B for a Global Certificate.

Each Certificate may be executed in one or more counterparts by the parties thereto, 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 2.02 *Form of Purchase Contract Agent's Certificate of Authentication*. The form of the Purchase Contract Agent's certificate of authentication of the Units shall be in substantially the form set forth on the form of the applicable Certificates.

ARTICLE III
THE UNITS

Section 3.01 *Amount; Form and Denominations*. The aggregate number of Units evidenced by Certificates authenticated, executed on behalf of the Holders and delivered hereunder will initially consist of 7,475,000 Units, except for Certificates authenticated, executed and delivered upon registration of transfer of, in exchange for, or in lieu of, other Certificates to the extent expressly permitted hereunder.

The Certificates shall be issuable only in registered form (which, for the avoidance of doubt, in the case of Global Certificates, shall be registered in the name of the Depository or its nominee) and only in denominations of a single Corporate Unit or Treasury Unit and any integral multiple thereof.

Section 3.02 *Rights and Obligations Evidenced by the Certificates*. Each Corporate Units Certificate shall evidence the number of Corporate Units specified therein, with each such Corporate Unit representing (1) the ownership by the Holder thereof of an Applicable Ownership Interests in Notes or an Applicable Ownership Interests in the Treasury Portfolio, as the case may be, subject to the Pledge of such Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of Applicable Ownership Interests in the Treasury Portfolio), as the case may be, by such Holder pursuant to this Agreement, and (2) the rights and obligations of the Holder thereof and the Company under one Purchase Contract.

The Purchase Contract Agent is hereby authorized, as attorney-in-fact for, and on behalf of, the Holder of each Corporate Unit, to pledge, pursuant to Article XI, the Applicable Ownership Interests in Notes or the portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of Applicable Ownership Interests in the Treasury Portfolio) forming a part of such Corporate Unit, to the Collateral Agent for the benefit of the Company, and to grant to the Collateral Agent, for the benefit of the Company, a security interest in the right, title and interest of such Holder in such Applicable Ownership Interests in Notes or portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of Applicable Ownership Interests in the Treasury Portfolio) to secure the Obligations of the Holder under each Purchase Contract to purchase shares of Common Stock. To effect such Pledge and grant such security interest, the Purchase Contract Agent on behalf of the Holders of Corporate Units has, on the date hereof, delivered to the Securities Intermediary for credit to the Collateral Account the Notes underlying the Applicable Ownership Interests in Notes by delivering such Notes indorsed in blank.

Upon the formation of a Treasury Unit pursuant to Section 3.13, each Treasury Units Certificate shall evidence the number of Treasury Units specified therein, with each such Treasury Unit representing (1) the ownership by the Holder thereof of a 1/20 undivided beneficial ownership interest in a Treasury Security with a principal amount at maturity equal to $1,000, subject to the Pledge of such interest by such Holder pursuant to this Agreement, and (2) the rights and obligations of the Holder thereof and the Company under one Purchase Contract. The Purchase Contract Agent is hereby authorized, as attorney-in-fact for, and on behalf of, the Holder of each Treasury Unit, to pledge, pursuant to Article XI, such Holder's interest in the Treasury Security forming a part of such Treasury Unit to the Collateral Agent, for the benefit of the Company, and to grant to the Collateral Agent, for the benefit of the Company, a security interest in the right, title and interest of such Holder in such Treasury Security to secure the Obligations of the Holder under each Purchase Contract to purchase shares of Common Stock.

Prior to the purchase and delivery of shares of Common Stock under each Purchase Contract, such Purchase Contract shall not entitle the Holder of a Unit to any of the rights of a holder of shares of Common Stock, including, without limitation, the right to vote or receive any dividends or other payments or distributions or to consent or to receive notice as a shareholder in respect of the meetings of shareholders or for the election of directors of the Company or for any other matter, or any other rights whatsoever as a shareholder of the Company.

Section 3.03 *Execution, Authentication, Delivery and Dating*. Subject to the provisions of Section 3.13 and Section 3.14, upon the execution and delivery of this Agreement, and at any time and from time to time thereafter, the Company may deliver Certificates executed by the Company to the Purchase Contract Agent for authentication, execution on behalf of the Holders as attorney-in-fact for the Holders and delivery, together with its Issuer Order for authentication of such Certificates, and the Purchase Contract Agent in accordance with such Issuer Order shall authenticate, execute on behalf of the Holders as their attorney-in-fact and deliver such Certificates.

The Certificates shall be executed on behalf of the Company by an Authorized Officer of the Company. The signature of any such Authorized Officer on the Certificates may be manual or facsimile.

Certificates bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Certificates or did not hold such offices at the date of such Certificates.

No Purchase Contract evidenced by a Certificate shall be valid until such Certificate has been executed on behalf of the Holder by the manual, electronic or facsimile signature of an authorized signatory of the Purchase Contract Agent, as such Holder's attorney-in-fact. Such signature by an authorized signatory of the Purchase Contract Agent shall be conclusive evidence that the Holder of such Certificate has entered into the Purchase Contracts evidenced by such Certificate.

Each Certificate shall be dated the date of its authentication.

No Certificate shall be entitled to any benefit under this Agreement or be valid or obligatory for any purpose unless there appears on such Certificate a certificate of authentication substantially in the form provided for herein executed by an authorized signatory of the Purchase Contract Agent by manual, electronic or facsimile signature, and such certificate of authentication upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly authenticated and delivered hereunder.

Section 3.04 *Temporary Certificates*. Pending the preparation of definitive Certificates, the Company may execute and deliver to the Purchase Contract Agent, and upon receipt of an Issuer Order for authentication, the Purchase Contract Agent shall authenticate, execute on behalf of the Holders as their attorney-in-fact, and deliver, in lieu of such definitive Certificates, temporary Certificates which are in substantially the form set forth in Exhibit A or Exhibit B, 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 Corporate Units or the Treasury Units, as the case may be, are listed (if any), or as may, consistently herewith, be determined by the officers of the Company executing such Certificates, as evidenced by their execution of the Certificates.

If temporary Certificates are issued, the Company will cause definitive Certificates to be prepared without unreasonable delay. After the preparation of definitive Certificates, the temporary Certificates shall be exchangeable for definitive Certificates upon surrender of the temporary Certificates at the Corporate Trust Office of the Purchase Contract Agent, at the expense of the Company and without charge to the Holder. Upon surrender for cancellation of any one or more temporary Certificates, the Company shall execute and deliver to the Purchase Contract Agent, and upon receipt of an Issuer Order for authentication, the Purchase Contract Agent shall authenticate, execute on behalf of the Holder as their attorney-in-fact, and deliver in exchange therefor, one or more definitive Certificates of like tenor and denominations and evidencing a like number of Units as the temporary Certificate or Certificates so surrendered. Until so exchanged, the temporary Certificates shall in all respects evidence the same benefits and the same obligations with respect to the Units evidenced thereby as definitive Certificates.

Section 3.05 *Registration; Registration of Transfer and Exchange*. The Purchase Contract Agent shall keep at the Corporate Trust Office a register (the "**Security Register**") in which, subject to such reasonable regulations as it may prescribe, the Purchase Contract Agent shall provide for the registration of Certificates and of transfers of Certificates (the Purchase Contract Agent, in such capacity, the "**Securities Registrar**"). The Securities Registrar shall record separately the registration and transfer of the Certificates evidencing Corporate Units and Treasury Units.

Upon surrender for registration of transfer of any Certificate at the Corporate Trust Office of the Purchase Contract Agent, the Company shall execute and deliver to the Purchase Contract Agent in its capacity as transfer agent, and upon receipt of an Issuer Order for authentication, the Purchase Contract Agent shall authenticate, execute on behalf of the designated transferee or transferees, and deliver, in the name of the designated transferee or transferees, one or more new Certificates of any authorized denominations, of like tenor, and evidencing a like number of Corporate Units or Treasury Units, as the case may be.

At the option of the Holder and upon written notice to the Company and the Purchase Contract Agent, Certificates may be exchanged for other Certificates, of any authorized denominations and evidencing a like number of Corporate Units or Treasury Units, as the case may be, upon surrender of the Certificates to be exchanged at the Corporate Trust Office of the Purchase Contract Agent. Whenever any Certificates are so surrendered for exchange, the Company shall execute and deliver to the Purchase Contract Agent, and upon receipt of an Issuer Order for authentication, the Purchase Contract Agent shall authenticate, execute on behalf of the Holder, as its attorney-in-fact, and deliver to the Holder the Certificates which the Holder making the exchange is entitled to receive.

All Certificates issued upon any registration of transfer or exchange of a Certificate shall evidence the ownership of the same number of Corporate Units or Treasury Units, as the case may be, and be entitled to the same benefits and subject to the same obligations under this Agreement as the Corporate Units or the Treasury Units, as the case may be, evidenced by the Certificate surrendered upon such registration of transfer or exchange.

Every Certificate 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 a Certificate, but the Company and the Purchase Contract Agent 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 Certificates, other than any exchanges not involving any transfer to a person other than the Holder.

Notwithstanding the foregoing, the Company shall not be obligated to execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall not be obligated to authenticate, execute on behalf of the Holder as its attorney-in-fact and deliver any Certificate in exchange for any other Certificate presented or surrendered for registration of transfer or for exchange on or after any Early Settlement Date or any date on which the Fundamental Change Early Settlement Right is exercised with respect to such Certificate, any Termination Date or the Business Day immediately preceding the Purchase Contract Settlement Date. In lieu of delivery of a new Certificate, upon satisfaction of the applicable conditions specified above in this Section and receipt of appropriate registration or transfer instructions from such Holder, the Purchase Contract Agent shall:

(i) if the Purchase Contract Settlement Date or an Early Settlement Date or a Fundamental Change Early Settlement Date with respect to such other Certificate (or portion thereof) has occurred, delivered or cause to be delivered the shares of Common Stock issuable in respect of the Purchase Contracts forming a part of the Units evidenced by such other Certificate (or portion thereof) on the applicable Settlement Date; and

(ii) if a Termination Event, an Early Settlement, or a Fundamental Change Early Settlement shall have occurred prior to the Purchase Contract Settlement Date, or a Cash Settlement shall have occurred, transfer the Notes, the Treasury Securities, or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, underlying such Certificate, in each case subject to the applicable conditions and in accordance with the applicable provisions of Section 3.15 and Article V. The Purchase Contract Agent shall have no 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 Certificate (including any transfers between or among Beneficial Owners of interests in any Global Certificate or between or among Depository Participants) 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.

In the event that any Notes underlying Pledged Applicable Ownership Interests in Notes with respect to any Corporate Units in global form are to be released from the Pledge following a Termination Event, Collateral Substitution, Cash Settlement, Successful Remarketing, Early Settlement or Fundamental Change Early Settlement (a "**Released Note**"), such release and delivery shall be evidenced by an endorsement by the Securities Intermediary, at the direction of the Collateral Agent, on the Note held by the Securities Intermediary and credited to the Collateral Account (the "**Pledged Note**") reflecting a reduction in the principal amount of such Pledged Note equal in amount (the "**Reduced Principal Amount**") to the principal amount of the Released Note. The Collateral Agent shall confirm any such Reduced Principal Amount by delivering a photocopy of such endorsement made on the Pledged Note evidencing such Reduced Principal Amount to (i) the Trustee at the email address or other address of the Trustee provided for notices to the Trustee in Section 1.05 (or at such other email address or other address as the Trustee shall provide to the Collateral Agent) and (ii) the Company at the facsimile number, email address or other address of the Company for notices to the Company on the signature page of this Agreement (or at such other facsimile number, email address or other address as the Company shall provide to the Collateral Agent). Upon receipt of such confirmation, the Company shall deliver an instruction letter to the Collateral Agent to instruct the Securities Intermediary to deliver the Pledged Note (which will be evidenced by the original definitive note held by the Securities Intermediary) to the Trustee along with an instruction to coordinate the specified decrease in the Pledged Note and the corresponding increase in the Global Security held by the Trustee with respect to the Notes in an amount equal to the Reduced Principal Amount in accordance with the procedures of the Depository, and the Trustee shall make an endorsement on such Global Security to reflect such increase. Except in the case of a release from the Pledge following a Termination Event, the Trustee shall then promptly return the Pledged Notes to the Securities Intermediary for credit to the Collateral Account. Other than the exercise of reasonable care in the handling of the Pledged Notes, neither the Collateral Agent nor the Trustee shall be responsible for perfecting, maintaining, monitoring, preserving or protecting the security interest or lien granted under this Agreement.

In the event that any Note is transferred to the Securities Intermediary for credit to the Collateral Account pursuant to Section 3.14 (a "**Subjected Note**") in connection with the re-creation of Corporate Units, such transfer shall be evidenced by an endorsement by the Securities Intermediary, at the direction of the Collateral Agent, on the Pledged Note held by the Securities Intermediary reflecting an increase in the principal amount of such Pledged Note equal in amount (the "**Increased Principal Amount**") to the principal amount of such Subjected Note. The Collateral Agent shall confirm any such Increased Principal Amount by delivering a photocopy of such endorsement made on the Pledged Note evidencing such Increased Principal Amount to (i) the Trustee at the email address or other address of the Trustee provided for notices to the Trustee in Section 1.05 (or at such other email address or other address as the Trustee shall provide to the Collateral Agent) and (ii) the Company at the facsimile number, email address or other address of the Company for notices to the Company on the signature page of this Agreement (or at such other facsimile number, email address or other address as the Company shall provide to the Collateral Agent). Upon receipt of such confirmation, the Company shall deliver an instruction letter to the Collateral Agent directing the Securities Intermediary to deliver the Pledged Note (which will be evidenced by the original definitive note held by the Securities Intermediary) to the Trustee along with an instruction to coordinate the specified increase in the Pledged Notes and the corresponding decrease in the Global Security held by the Trustee in an amount equal to the Increased Principal Amount in accordance with the procedures of the Depository, and the Trustee shall make an endorsement on such Global Security to reflect such decrease. The Trustee shall then promptly return the Pledged Notes to the Securities Intermediary for credit to the Collateral Account.

Section 3.06 *Book-Entry Interests*. The Certificates will be initially issued in the form of one or more fully registered Global Certificates, 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. The Company has entered into a letter of representation with the Depository in the form provided by the Depository and the Purchase Contract Agent in each of its capacities is hereby authorized to act in accordance with such letter and Applicable Procedures. Such Global Certificates shall initially be registered on the Security Register in the name of Cede & Co., the nominee of the Depository, and no Beneficial Owner will receive a definitive Certificate representing such Beneficial Owner's interest in such Global Certificate, except as provided in Section 3.09. Following the issuance of such Global Certificates and unless and until definitive and fully registered Certificates have been issued to Beneficial Owners pursuant to Section 3.09:

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

(ii) the Company and the Agents shall be entitled to deal with the Depository for all purposes of this Agreement (including, without limitation, making Contract Adjustment Payments, providing notices and receiving approvals, votes or consents hereunder) as the Holder of the Units evidenced by Global Certificates and the sole holder of the Global Certificates and shall have no obligation to the Beneficial Owners; *provided* that a Beneficial Owner may directly enforce against the Company, without any consent, proxy, waiver or involvement of the Depository of any kind, such Beneficial Owner's right to receive a definitive Certificate representing the Units beneficially owned by such Beneficial Owner, as set forth in Section 3.09;

(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) except as set forth in the proviso of clause (ii) of this Section 3.06, the rights of the Beneficial Owners shall be exercised only through the Depository and shall be limited to those established by law and agreements between such Beneficial Owners and the Depository or the Depository Participants.

The Depository will make book-entry transfers among Depository Participants and receive and transmit Contract Adjustment Payments to such Depository Participants. Transfers of securities evidenced by Global Certificates shall be made through the facilities of the Depository, and any cancellation of, or increase or decrease in the number of, such securities (including the creation of Treasury Units and the recreation of Corporate Units pursuant to Section 3.13 and Section 3.14, respectively) shall be accomplished by the Purchase Contract Agent making appropriate annotations on the Schedule of Increases and Decreases set forth in such Global Certificate. None of the Company, the Purchase Contract Agent or any other Agent shall have any responsibility for any actions taken or not taken by the Depository.

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 a solicitation agent appointed by the Company shall give such notices and communications to the Holders and, with respect to any Units registered in the name of the Depository or the nominee of the Depository, the Company or the Company's solicitation agent shall, except as set forth herein, have no obligations to the Beneficial Owners.

Section 3.08 *Appointment of Successor Depository*. If the Depository elects to discontinue its services as securities depository with respect to the Units, the Company may, in its sole discretion, appoint a successor Depository with respect to the Units, as long as such successor Depository constitutes a "clearing agency" registered under Section 17A of the Exchange Act.

Section 3.09 *Definitive Certificates*.

If:

(i) the Depository notifies the Company that it is unwilling or unable to continue its services as securities depository with respect to the Units and no successor Depository has been appointed pursuant to Section 3.08 within 90 days after the Company's receipt of such notice;

(ii) the Depository ceases to be a "clearing agency" registered under Section 17A of the Exchange Act when the Depository is required to be so registered to act as the Depository and the Company receives notice of such cessation, and no successor Depository has been appointed pursuant to Section 3.08 within 90 days after the Company's receipt of such notice or the Company's becoming aware of such cessation; or

(iii) any Event of Default with respect to the Notes, or any event that after notice or lapse of time would constitute an Event of Default with respect to the Notes, has occurred and is continuing, or the Company has failed to perform any of its obligations under this Agreement, the Units or the Purchase Contracts, and in each case any Beneficial Owner requests that its beneficial interest be exchanged for a definitive Certificate;

then (x) definitive Certificates shall be prepared by the Company with respect to such Units and delivered to the Purchase Contract Agent, together with an Issuer Order for authentication and (y) upon surrender of the Global Certificates representing the Units by the Depository, accompanied by registration instructions, the Company shall cause definitive Certificates to be delivered to Beneficial Owners in accordance with instructions provided by the Depository; *provided* that in the case of clause (iii) only the beneficial interests of the Beneficial Owners so requesting shall be exchanged for definitive Certificates, and the aggregate number of Units represented by the Global Certificate will be reduced accordingly, in accordance with Applicable Procedures and standing arrangements between the Purchase Contract Agent and the Depository. The Company and the Purchase Contract Agent shall not be liable for any delay in delivery of such instructions and may conclusively rely on and shall be authorized and protected in relying on, such instructions. Each definitive Certificate so delivered shall evidence Units of the same kind and tenor as the Global Certificate (or beneficial interests in a Global Certificate) so surrendered in respect thereof.

Section 3.10 *Mutilated, Destroyed, Lost and Stolen Certificates*. If any mutilated Certificate is surrendered to the Purchase Contract Agent or its agent at the Corporate Trust Office, the Company shall execute and deliver to the Purchase Contract Agent, and upon receipt of an Issuer Order for authentication, the Purchase Contract Agent shall authenticate, execute on behalf of the Holder at its attorney-in-fact, and deliver to the Holder in exchange therefor, a new Certificate, evidencing the same number of Corporate Units or Treasury Units, as the case may be, and bearing a Certificate number not contemporaneously outstanding.

If there shall be delivered to the Company and the Purchase Contract Agent (i) evidence to their satisfaction of the destruction, loss or theft of any Certificate, and (ii) such indemnity and/or security to their satisfaction as may be required by either of them to hold each of them and any agent of any of them harmless, then, in the absence of notice to the Company or the Purchase Contract Agent that such Certificate has been acquired by a protected purchaser, the Company shall execute and deliver to the Purchase Contract Agent, and upon receipt of an Issuer Order for authentication, the Purchase Contract Agent shall authenticate, execute on behalf of the Holder as its attorney-in-fact, and deliver to the Holder, in lieu of any such destroyed, lost or stolen Certificate, a new Certificate, evidencing the same number of Corporate Units or Treasury Units, as the case may be, and bearing a Certificate number not contemporaneously outstanding.

Notwithstanding the foregoing, the Company shall not be obligated to execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall not be obligated to authenticate, execute on behalf of the Holder as its attorney-in-fact, and deliver to the Holder, with respect to such mutilated, destroyed, lost or stolen Certificate a new Certificate on or after the Business Day immediately preceding the Purchase Contract Settlement Date or the Termination Date. In lieu of delivery of a new Certificate, upon satisfaction of the applicable conditions specified above in this Section and receipt of appropriate registration or transfer instructions from such Holder, the Purchase Contract Agent shall:

(i) if the Purchase Contract Settlement Date with respect to such lost, stolen, destroyed or mutilated Certificate has occurred, deliver or cause to be delivered the shares of Common Stock issuable in respect of the Purchase Contracts forming a part of the Units evidenced by such Certificate; and

(ii) if a Termination Event with respect to such mutilated, destroyed, lost or stolen Certificate shall have occurred prior to the Purchase Contract Settlement Date, transfer the Notes, the Treasury Securities or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, underlying such Certificate, subject to the applicable conditions and in accordance with the applicable provisions of Section 3.15 and Article V.

Upon the issuance of any new Certificate under this Section, 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 fees and expenses (including, without limitation, the fees and expenses of the Purchase Contract Agent) connected therewith.

Every new Certificate issued pursuant to this Section in lieu of any destroyed, lost or stolen Certificate shall constitute an original additional contractual obligation of the Company and of the Holder in respect of the Units evidenced thereby, whether or not the destroyed, lost or stolen Certificate (and the Units 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 Certificates delivered hereunder.

The provisions of this Section 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 Certificates.

Section 3.11 *Persons Deemed Owners*. Prior to due presentment of a Certificate for registration of transfer, the Company and the Purchase Contract Agent, and any agent of the Company or the Purchase Contract Agent, may treat the Person in whose name such Certificate is registered as the owner of the Units evidenced thereby for purposes of (subject to any applicable record date) any payment or distribution with respect to the Notes underlying the Applicable Ownership Interests in Notes, on the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (ii) of the definition of Applicable Ownership Interests in the Treasury Portfolio) or payment of Contract Adjustment Payments and performance of the Purchase Contracts and for all other purposes whatsoever in connection with such Units (subject to the proviso contained in clause (ii) of Section 3.06), whether or not such payment, distribution, or performance shall be overdue and notwithstanding any notice to the contrary, and none of the Company or the Purchase Contract Agent, nor any agent of the Company or the Purchase Contract Agent, shall be affected by notice to the contrary.

None of the Purchase Contract Agent or the Securities Registrar shall have any responsibility or obligation to any Beneficial Owner of Units represented by a Global Certificate 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 Units or with respect to the delivery to any agent member, Beneficial Owner or other Person (other than the Depository) of any notice or the payment of any amount, under or with respect to such Units. All notices and communications to be given to the Holders and all payments to be made to Holders pursuant to the Units 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 Certificate). The rights of Beneficial Owners in the Units underlying a Global Certificate shall be exercised only through the Depository subject to its Applicable Procedures. The Purchase Contract Agent and the Securities Registrar shall be entitled to rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any Beneficial Owners. The Purchase Contract Agent and the Securities Registrar shall be entitled to deal with the Depository, and any nominee thereof, that is the registered holder of any Global Certificate for all purposes of this Agreement relating to such Global Certificate (including the making of any payment or delivery hereunder and the giving of instructions or directions by or to the Beneficial Owner of any Units underlying such Global Certificate) as the sole Holder of such Global Certificate and shall have no obligations to the Beneficial Owners thereof (subject to the *proviso* contained in clause (ii) of Section 3.06). None of the Purchase Contract Agent or the Securities Registrar shall have any responsibility or liability for any acts or omissions of the Depository with respect to any Units underlying such Global Certificate, for the records of the Depository, including records in respect of beneficial ownership interests in respect of Units underlying such Global Certificate, 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 Owner of any Units underlying such Global Certificate, or for any transfers of beneficial interests in any Units underlying such Global Certificate.

Notwithstanding the foregoing, with respect to any Global Certificate, nothing contained herein shall prevent the Company, the Purchase Contract Agent or any agent of the Company or the Purchase Contract Agent, 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 Certificate, or impair, as between such Depository and the related Beneficial Owner, the operation of customary practices governing the exercise of rights of the Depository (or its nominee) as Holder of such Global Certificate. None of the Company, the Purchase Contract Agent or any agent of the Company or the Purchase Contract Agent will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Certificate or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 3.12 *Cancellation*. All Certificates surrendered for delivery of shares of Common Stock on or after the Purchase Contract Settlement Date or in connection with an Early Settlement or a Fundamental Change Early Settlement or for delivery of the Notes underlying the Applicable Ownership Interests in Notes, the Applicable Ownership Interests in the Treasury Portfolio or the Treasury Securities, as the case may be, after the occurrence of a Termination Event or pursuant to a Cash Settlement, an Early Settlement, a Fundamental Change Early Settlement or a Collateral Substitution, or upon the registration of transfer or exchange of a Unit, shall, if surrendered to any Person other than the Purchase Contract Agent, be delivered to the Purchase Contract Agent along with appropriate written instructions regarding the cancellation thereof and shall be promptly cancelled by it. The Company may at any time deliver to the Purchase Contract Agent for cancellation any Certificates previously authenticated, executed and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Certificates so delivered shall, upon an Issuer Order, be promptly cancelled by the Purchase Contract Agent. No Certificates shall be authenticated, executed on behalf of the Holder and delivered in lieu of or in exchange for any Certificates cancelled as provided in this Section 3.12, except as expressly permitted by this Agreement. All cancelled Certificates 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 Certificate, such acquisition shall not operate as a cancellation of such Certificate unless and until such Certificate is delivered to the Purchase Contract Agent for cancellation.

Section 3.13 *Creation of Treasury Units by Substitution of Treasury Securities*. Subject to the conditions set forth in this Agreement, a Holder of Corporate Units may, at any time from and after the date of this Agreement, other than during a Blackout Period or after a Successful Remarketing, effect a Collateral Substitution and separate the Notes underlying the Pledged Applicable Ownership Interests in Notes in respect of such Holder's Corporate Units by substituting for such Pledged Applicable Ownership Interests in Notes for which Collateral Substitution is being made, Treasury Securities in an aggregate principal amount at maturity equal to the aggregate principal amount of the Notes underlying the Pledged Applicable Ownership Interests in Notes; provided that Holders may make Collateral Substitutions only in integral multiples of 20 Corporate Units. To effect such substitution, the Holder must:

(1) Transfer to the Securities Intermediary, for credit to the Collateral Account, Treasury Securities and/or security entitlements with respect thereto having an aggregate principal amount at maturity equal to the aggregate principal amount of the Notes underlying the Pledged Applicable Ownership Interests in Notes for which such Collateral Substitution is made; and

(2) Transfer the related Corporate Units to the Purchase Contract Agent accompanied by a notice to the Purchase Contract Agent, substantially in the form of Exhibit C, whereupon the Purchase Contract Agent shall promptly provide an instruction (in accordance with the instructions provided for in the aforementioned instructions from the Holder) to such effect to the Collateral Agent, substantially in the form of Exhibit F.

Upon confirmation that the Treasury Securities described in clause (1) above or security entitlements with respect thereto have been credited to the Collateral Account and receipt of the instruction to the Collateral Agent described in clause (2) above, the Collateral Agent shall promptly release such Pledged Applicable Ownership Interests in Notes from the Pledge by directing the Securities Intermediary by a notice, substantially in the form of Exhibit G, to Transfer the Notes underlying such Pledged Applicable Ownership Interests in Notes to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent in accordance with the terms provided for herein, free and clear of the Pledge created hereby.

The substituted Treasury Securities will be pledged to the Company through the Collateral Agent to secure such Holder's obligation to purchase shares of Common Stock under the related Purchase Contract.

Upon credit to the Collateral Account of Treasury Securities and/or security entitlements with respect thereto delivered by a Holder of Corporate Units and receipt of the related instruction from the Collateral Agent, the Securities Intermediary shall promptly Transfer the Notes underlying the appropriate Pledged Applicable Ownership Interests in Notes to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent in accordance with the terms provided for herein, free and clear of the Pledge created hereby.

Upon receipt of the Notes underlying such Pledged Applicable Ownership Interests in Notes, the Purchase Contract Agent shall promptly:

(i) cancel the related Corporate Units;

(ii) Transfer the Notes to the Holder; and

(iii) Cause the Collateral Agent to deliver Treasury Units in book-entry form, or if applicable, cause the Collateral Agent to deliver the Treasury Units to the Purchase Contract Agent, upon receipt of which the Purchase Contract Agent shall authenticate, execute on behalf of such Holder, as its attorney-in-fact, and deliver Treasury Units in the form of a Treasury Units Certificate executed by the Company in accordance with Section 3.03 evidencing the same number of Purchase Contracts as were evidenced by the cancelled Corporate Units.

Holders who elect to separate the Notes by substituting Treasury Securities for Applicable Ownership Interests in Notes shall be responsible for any taxes, governmental charges or other fees or expenses (including, without limitation, fees and expenses payable to the Collateral Agent) attributable to such Collateral Substitution, and neither the Company nor any Agent shall be responsible for any such taxes, governmental charges or other fees or expenses.

(b) In the event a Holder making a Collateral Substitution pursuant to this Section 3.13 fails to effect a book-entry transfer of the Corporate Units or fails to deliver Corporate Units Certificates to the Purchase Contract Agent after transferring Treasury Securities and/or securities entitlements in respect thereof to the Collateral Agent, for credit to the Collateral Account, any distributions on the Notes underlying the Applicable Ownership Interests in Notes constituting a part of such Corporate Units shall be held in the name of the Purchase Contract Agent or its nominee in trust for the benefit of such Holder, until such Corporate Units are so transferred or the Corporate Units Certificate is so delivered, as the case may be, or such Holder provides evidence satisfactory to the Company and the Purchase Contract Agent that such Corporate Units Certificate has been destroyed, lost or stolen, together with any indemnity and/or security that may be required by the Purchase Contract Agent and the Company.

(c) Except as provided for in this Section 3.13, or in connection with a Cash Settlement, an Early Settlement, a Fundamental Change Early Settlement or a Termination Event, for so long as the Purchase Contract underlying a Corporate Unit remains in effect, such Corporate Unit shall not be separable into its constituent parts, and the rights and obligations of the Holder in respect of the Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, and the Purchase Contract comprising such Corporate Units may be acquired, and may be transferred and exchanged, only as a Corporate Unit and in the manner provided for in Exhibit C.

Section 3.14 *Re-creation of Corporate Units*. Subject to the conditions set forth in this Agreement, a Holder of Treasury Units may effect a Collateral Substitution and recreate Corporate Units at any time from and after the date of this Agreement, other than during a Blackout Period or after a Successful Remarketing; *provided* that Holders of Treasury Units may only recreate Corporate Units in integral multiples of 20 Treasury Units. To recreate Corporate Units, the Holder must:

(1) Transfer to the Securities Intermediary for credit to the Collateral Account an equal amount of Notes having a total aggregate principal amount equal to the aggregate principal amount at maturity of the Pledged Treasury Securities to be released; and

(2) Transfer the related Treasury Units to the Purchase Contract Agent accompanied by a notice to the Purchase Contract Agent, substantially in the form of Exhibit C, whereupon the Purchase Contract Agent shall (in accordance with the instruction provided for in the aforementioned notice from the Holder) promptly provide an instruction to such effect to the Collateral Agent, substantially in the form of Exhibit H.

Upon confirmation that the Notes described in clause (1) above have been credited to the Collateral Account and receipt of the instruction from the Purchase Contract Agent described in clause (2) above, the Collateral Agent shall promptly release such Pledged Treasury Securities from the Pledge by directing the Securities Intermediary by a notice, substantially in the form of Exhibit I, to Transfer such Pledged Treasury Securities to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent, in accordance with the terms provided for herein, free and clear of the Pledge created hereby.

The substituted Notes will be pledged to the Company through the Collateral Agent to secure such Holder's obligation to purchase shares of Common Stock under the related Purchase Contract.

Upon credit to the Collateral Account of Notes delivered by a Holder of Treasury Units and receipt of the related instruction from the Collateral Agent, the Securities Intermediary shall promptly Transfer the Pledged Treasury Securities to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent, in accordance with the terms provided for herein, free and clear of the Pledge created hereby.

Upon receipt of such Treasury Securities, the Purchase Contract Agent shall promptly:

(i) cancel the related Treasury Units;

(ii) transfer the Treasury Securities to the Holder; and (iii) cause the Collateral Agent to deliver Corporate Units in book-entry form or, if applicable, cause the Collateral Agent to deliver the Corporate Units to the Purchase Contract Agent, upon receipt of which the Purchase Contract Agent shall authenticate, execute on behalf of such Holder, as its attorney-in-fact, and deliver Corporate Units in the form of a Corporate Units Certificate executed by the Company in accordance with Section 3.03 evidencing the same number of Purchase Contracts as were evidenced by the cancelled Treasury Units.

Holders who elect to recreate Corporate Units shall be responsible for any taxes, governmental charges or other fees or expenses (including, without limitation, fees and expenses payable to the Collateral Agent) attributable to such Collateral Substitution and neither the Company nor any Agent shall be responsible for any such taxes, governmental charges or other fees or expenses.

(b) Except as provided in this Section 3.14 or in connection with a Cash Settlement, an Early Settlement, a Fundamental Change Early Settlement or a Termination Event, for so long as the Purchase Contract underlying a Treasury Unit remains in effect, such Treasury Unit shall not be separable into its constituent parts and the rights and obligations of the Holder of such Treasury Unit in respect of the interest in the Treasury Security and Purchase Contract composing such Treasury Unit may be acquired, and may be transferred and exchanged, only as a Treasury Unit.

Section 3.15 *Transfer of Collateral Upon Occurrence of Termination Event*. Upon receipt by the Collateral Agent of written notice from the Company pursuant to Section 5.07 or from the Purchase Contract Agent following its receipt of such written notice from the Company or from Holders of not less than 25% of the aggregate Stated Amount of Units pursuant to this Section 3.15 that a Termination Event has occurred, the Collateral Agent shall promptly release all Collateral from the Pledge and shall promptly instruct the Securities Intermediary to Transfer (in accordance with the aforementioned notice):

(i) any Notes underlying Pledged Applicable Ownership Interests in Notes or security entitlements with respect thereto or Applicable Ownership Interests in the Treasury Portfolio and/or security entitlements with respect thereto;

(ii) any Pledged Treasury Securities and/or security entitlements with respect thereto;

(iii) any payments made by Holders (or the Permitted Investments, if any, of such payments) pursuant to Section 5.02(b)(ix) or 5.03; and

(iv) any Proceeds and all other payments the Collateral Agent receives in respect of the foregoing, to the Purchase Contract Agent for the benefit of the Holders for distribution to such Holders as instructed by the Holders to the Purchase Contract Agent, in accordance with the terms provided for herein, in accordance with their respective interests, free and clear of the Pledge created hereby; *provided*, however, if any Holder or Beneficial Owner shall be entitled to receive Notes in an aggregate principal amount of less than $1,000, or greater than $1,000 but not in an integral multiple of $1,000, the Company shall issue upon the request of the Purchase Contract Agent, on behalf of such Holder or Beneficial Owner, as their attorney-in-fact, Notes in denominations of $50, or integral multiples thereof, in exchange for Notes in denominations of $1,000 or integral multiples thereof; and *provided further*, if any Holder shall be entitled to receive, with respect to its Applicable Ownership Interests in the Treasury Portfolio or its Pledged Treasury Securities, any securities having a principal amount at maturity of less than $1,000, the Purchase Contract Agent shall dispose of such Applicable Ownership Interests in the Treasury Portfolio or the Pledged Treasury Securities for Cash and deliver to such Holder Cash in lieu of delivering the Applicable Ownership Interests in the Treasury Portfolio or the Pledged Treasury Securities, as the case may be, upon receipt of and in accordance with instructions to be separately provided by such Holder.

(b) Notwithstanding anything to the contrary in Section 3.15(a), if such Termination Event shall result from the Company becoming a debtor under the Bankruptcy Code, and if the Collateral Agent shall for any reason fail promptly to effectuate the release and Transfer of all Notes underlying Pledged Applicable Ownership Interests in Notes, Applicable Ownership Interests in the Treasury Portfolio, Pledged Treasury Securities and payments by Holders (or the Permitted Investments purchased with such payments) pursuant to Section 5.02(b)(ix) or 5.03 and Proceeds and all other payments received by the Collateral Agent in respect of the foregoing, as the case may be, as provided by this Section 3.15, the Company shall use its reasonable best efforts to obtain an opinion of a nationally recognized law firm to the effect that, notwithstanding the Company's being the debtor in such a bankruptcy case, the Collateral Agent will not be prohibited from releasing or Transferring the Collateral as provided in this Section 3.15, and shall deliver or cause to be delivered such opinion to the Collateral Agent within 10 days after the occurrence of such Termination Event, and if (A) the Company shall fail to obtain such opinion within 10 days after the occurrence of such Termination Event or (B) the Collateral Agent shall continue, after delivery of such opinion, to refuse to effectuate the release and Transfer of all Notes underlying Pledged Applicable Ownership Interests in Notes, Applicable Ownership Interests in the Treasury Portfolio, Pledged Treasury Securities and the payments by Holders (or the Permitted Investments, if any, of such payments) pursuant to Section 5.02(b)(ix) or 5.03 and Proceeds and all other payments received by the Collateral Agent in respect of the foregoing, as the case may be, as provided in this Section 3.15, then the Purchase Contract Agent shall within 15 days after receipt by the Purchase Contract Agent of written notice from the Company pursuant to Section 5.07 or written notice from Holders of not less than 25% of the aggregate Stated Amount of the Units of the occurrence of such Termination Event commence an action or proceeding in the court having jurisdiction of the Company's case under the Bankruptcy Code seeking an order requiring the Collateral Agent to effectuate the release and transfer of all Notes underlying Pledged Applicable Ownership Interests in Notes, Applicable Ownership Interests in the Treasury Portfolio, Pledged Treasury Securities and the payments by Holders (or the Permitted Investments, if any, purchased with such payments) pursuant to Section 5.02(b)(ix) or 5.03 and Proceeds and all other payments received by the Collateral Agent in respect of the foregoing, or as the case may be, as provided by this Section 3.15.

(c) Following receipt by the Purchase Contract Agent of written notice from the Company pursuant to Section 5.07 or written notice from a Holder pursuant to Section 3.15(b) of the occurrence of a Termination Event and the Transfer to the Purchase Contract Agent of the Notes underlying Pledged Applicable Ownership Interests in Notes, the appropriate Applicable Ownership Interests in the Treasury Portfolio and/or the Pledged Treasury Securities, as the case may be, pursuant to this Section 3.15, the Purchase Contract Agent shall request transfer instructions with respect to such Notes, Applicable Ownership Interests in the Treasury Portfolio and/or Pledged Treasury Securities, as the case may be, from each Holder by written request, substantially in the form of Exhibit D, delivered to such Holder at its address as it appears in the Security Register.

(d) Upon book-entry transfer of the Corporate Units or the Treasury Units or delivery of a Corporate Units Certificate or a Treasury Units Certificate to the Purchase Contract Agent with such transfer instructions in connection with a Termination Event, the Purchase Contract Agent shall transfer the Notes underlying Pledged Applicable Ownership Interests in Notes, the Applicable Ownership Interests in the Treasury Portfolio or Pledged Treasury Securities, as the case may be, underlying such Corporate Units or Treasury Units, as the case may be, to such Holder by book-entry transfer, or other appropriate procedures, in accordance with such instructions and, in the case of the Notes underlying Pledged Applicable Ownership Interests in Notes, in accordance with the terms of the Indenture. In the event a Holder of Corporate Units or Treasury Units fails to deliver transfer instructions or effect such transfer or delivery, the Notes underlying Pledged Applicable Ownership Interests in Notes, the Applicable Ownership Interests in the Treasury Portfolio or the Pledged Treasury Securities, as the case may be, underlying such Corporate Units or Treasury Units, as the case may be, and any distributions thereon, 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 transfer of such Corporate Units or Treasury Units or surrender of the Corporate Units Certificate or the Treasury Units Certificate or the receipt by the Company and the Purchase Contract Agent from such Holder of satisfactory evidence that such Corporate Units Certificate or Treasury Units Certificate has been destroyed, lost or stolen, together with any indemnity and/or security that may be required by the Purchase Contract Agent and the Company; and

(ii) the expiration of the time period specified by the applicable law governing abandoned property in the state in which the Purchase Contract Agent holds such property.

Section 3.16 *No Consent to Assumption*. Each Holder of a Unit, by acceptance thereof, shall be deemed to have expressly withheld any consent to the assumption under Section 365 of the Bankruptcy Code or otherwise, of the Purchase Contract by the Company or its trustee, receiver, liquidator or a person or entity performing similar functions in the event that the Company becomes a debtor under the Bankruptcy Code or subject to other similar state or federal law providing for reorganization or liquidation.

Section 3.17 *Substitutions*. Whenever a Holder has the right to substitute Treasury Securities or Notes underlying Applicable Ownership Interests in Notes, as the case may be, or security entitlements for any of them, for financial assets held in the Collateral Account, such substitution shall not constitute a novation of the security interest created hereby.

ARTICLE IV
THE NOTES

Section 4.01 *Interest Payments; Rights to Interest Payments Preserved*. The Collateral Agent shall transfer all income and distributions (other than those described in Section 4.02(a)) received by it on account of the Notes underlying Pledged Applicable Ownership Interests in Notes (if the Notes underlying Pledged Applicable Ownership Interests in Notes are registered in the name of the Collateral Agent), the Pledged Applicable Ownership Interests in the Treasury Portfolio or the Permitted Investments from time to time held in the Collateral Account to the Purchase Contract Agent, according to transfer instructions to be provided by the Purchase Contract Agent to the Collateral Agent in writing, for distribution to the applicable Holders as provided in this Agreement and the Purchase Contracts, free and clear of the Pledge created hereby.

(a) Any payment in respect of a Unit relating to any Note underlying Applicable Ownership Interests in Notes or any distribution in respect of a Unit on any portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (ii) or (iii) of the definition of Applicable Ownership Interests in the Treasury Portfolio) (in each case other than those described in Section 4.02(a)), as the case may be, which is paid in respect of any Payment Date shall, subject to receipt thereof by the Purchase Contract Agent in its capacity as paying agent from the Company or from the Collateral Agent as provided in Section 4.01(a), be paid on such Payment Date to the Person in whose name the Corporate Units Certificate (or one or more Predecessor Corporate Units Certificates) of which such Applicable Ownership Interests in Notes or portion of the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, forms a part is registered at the close of business on the Record Date for such Payment Date. If the book-entry system for the Units has been terminated, any such payment will be payable by check mailed to the address of the Person entitled thereto at such Person's address as it appears on the Security Register, or by wire transfer to an account such Person shall have designated in writing to the Purchase Contract Agent in its capacity as paying agent at least five Business Days prior to the relevant Payment Date.

(b) Each Corporate Units Certificate evidencing Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio delivered under this Agreement upon registration of transfer of or in exchange for or in lieu of any other Corporate Units Certificate shall carry the right to accrued and unpaid interest or distributions, and to accrued interest or distributions, which were carried by Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio underlying such other Corporate Units Certificate.

(c) In the case of any Corporate Unit with respect to which (1) Cash Settlement of the underlying Purchase Contract is properly effected pursuant to Section 5.02(b)(ix) or 5.03(a), (2) Early Settlement of the underlying Purchase Contract is properly effected pursuant to Section 5.08, (3) Fundamental Change Early Settlement of the underlying Purchase Contract is properly effected pursuant to Section 5.05(b)(ii) or (4) a Collateral Substitution is properly effected pursuant to Section 3.13, in each case on a date that is after any Record Date and prior to or on the next succeeding Payment Date, interest in respect of the Notes underlying Applicable Ownership Interests in Notes or distributions on Applicable Ownership Interests in the Treasury Portfolio, as the case may be, underlying such Corporate Unit otherwise payable on such Payment Date shall be payable on such Payment Date notwithstanding such Cash Settlement, Early Settlement, Fundamental Change Early Settlement or Collateral Substitution, and such payment or distributions shall, subject to receipt thereof by the Purchase Contract Agent, be payable to the Person in whose name the Corporate Units Certificate (or one or more Predecessor Corporate Units Certificates) was registered at the close of business on the Record Date.

(d) Except as otherwise expressly provided in Section 4.01(d), in the case of any Corporate Unit with respect to which Cash Settlement, Early Settlement or Fundamental Change Early Settlement of the underlying Purchase Contract is properly effected, or with respect to which a Collateral Substitution is properly effected, payments attributable to the Notes underlying Applicable Ownership Interests in Notes or distributions on Applicable Ownership Interests in the Treasury Portfolio, as the case may be, that would otherwise be payable or made after the applicable Settlement Date or the date of the Collateral Substitution, as the case may be, shall not be payable hereunder to the Holder of such Corporate Units; *provided*, however, that to the extent that such Holder continues to hold Separate Notes or Applicable Ownership Interests in the Treasury Portfolio that formerly comprised a part of such Holder's Corporate Units, such Holder shall be entitled to receive interest on such Separate Notes or distributions on such Applicable Ownership Interests in the Treasury Portfolio, as applicable.

Section 4.02 *Payments Prior to or on Purchase Contract Settlement Date*. Subject to the provisions of Section 5.03(a), Section 5.05(b)(ii) and Section 5.08, and except as provided in Section 4.02(b), if no Termination Event shall have occurred, all payments received by the Securities Intermediary in respect of (1) the Put Price for, or the proceeds received in a Successful Final Remarketing attributable to, Notes underlying Pledged Applicable Ownership Interests in Notes, (2) the Pledged Applicable Ownership Interests in the Treasury Portfolio, and (3) the Pledged Treasury Securities shall be credited to the Collateral Account to be invested as directed in writing by the Company (if applicable) in Permitted Investments until the Purchase Contract Settlement Date, and such payments (or the proceeds of such Permitted Investments, if applicable) shall be transferred to the Company on the Purchase Contract Settlement Date as provided in Sections 5.02 and 5.03 to the extent necessary to satisfy the Holder's obligation pursuant to Section 5.01 to pay the Purchase Price to settle the Purchase Contracts. Any balance thereafter remaining in the Collateral Account shall be released from the Pledge and transferred to the Purchase Contract Agent for distribution to the applicable Holders for distribution to such Holders in accordance with their respective interests pursuant to Section 11.02, free and clear of the Pledge created hereby. If the Company fails to deliver investment instructions by 10:30 a.m., New York City time, on the day such payments are received by the Securities Intermediary, the Collateral Agent shall instruct the Securities Intermediary to invest such payments in the Permitted Investments (if any), which have been designated by the Company in writing from time to time in a standing instruction to the Securities Intermediary which shall be effective until revoked or superseded. If no such standing instruction exists or the Securities Intermediary determines in its sole discretion that any such standing instruction is not clear, such funds shall remain uninvested and neither the Collateral Agent nor the Securities Intermediary shall have any liability for payment of interest on such uninvested funds. In no event shall the Collateral Agent or the Securities Intermediary be liable for the selection of Permitted Investments or for investment losses, fees, taxes or other charges incurred thereon or in connection with any reinvestment or liquidation of an investment hereunder. The Collateral Agent and the Securities Intermediary shall have no liability in respect of losses incurred as a result of the failure of the Company to provide timely written investment direction.

(a) All payments received by the Securities Intermediary in respect of (1) the Notes, (2) the Applicable Ownership Interests in the Treasury Portfolio and (3) the Treasury Securities or security entitlements with respect thereto, that, in each case, have been released from the Pledge hereunder shall be transferred to the Purchase Contract Agent for the benefit of the applicable Holders for distribution to such Holders in accordance with their respective interests.

Section 4.03 *Notice and Voting*. Subject to Section 4.03(b), the Purchase Contract Agent shall have no responsibility to exercise, or refrain from exercising, any and all voting and other consensual rights pertaining to the Notes underlying Pledged Applicable Ownership Interests in Notes or any part thereof. Upon receipt of any notices and other communications in respect of any Notes underlying Pledged Applicable Ownership Interests in Notes, including either notice of any meeting at which holders of the Notes are entitled to vote or the solicitation of consents, waivers or proxies of holders of the Notes, the Collateral Agent shall use commercially reasonable efforts to send promptly to the Purchase Contract Agent such notice or communication, and as soon as reasonably practicable after receipt of a written request therefor from the Purchase Contract Agent, acting as attorney-in-fact for the Holders, to execute and deliver to the Purchase Contract Agent such proxies and other instruments in respect of such Notes underlying Pledged Applicable Ownership Interests in Notes as are timely prepared by the Company and delivered to the Collateral Agent for delivery to the Purchase Contract Agent with respect to the Notes underlying Pledged Applicable Ownership Interests in Notes.

(a) Upon receipt of notice of any meeting at which holders of Notes are entitled to vote or upon any solicitation of consents, waivers or proxies of holders of Notes, the Purchase Contract Agent shall, as soon as practicable thereafter, subject to Section 1.05, mail, first class, postage prepaid, or electronic delivery, in each case, to the Holders of Corporate Units a notice:

(i) containing such information as is contained in the notice or solicitation;

(ii) stating that each Holder on the record date set by the Purchase Contract Agent therefor (which, to the extent possible, shall be the same date as the record date set by the Company for determining the holders of Notes entitled to vote) shall be entitled to instruct the Purchase Contract Agent as to the exercise of the voting rights pertaining to such Notes underlying the Applicable Ownership Interests in Notes that are a component of their Corporate Units; and

(iii) stating the manner in which such instructions may be given.

Upon the written request of the Holders of Corporate Units on such record date received by the Purchase Contract Agent at least six days prior to such meeting, the Purchase Contract Agent shall endeavor insofar as practicable to vote or cause to be voted, in accordance with the instructions set forth in such requests, the maximum aggregate principal amount of Notes (rounded down to the nearest integral multiple of $1,000) as to which any particular voting instructions are received. In the absence of specific instructions from the Holder of Corporate Units, the Purchase Contract Agent shall abstain from voting the Notes underlying Applicable Ownership Interests in Notes that are a component of such Corporate Units. The Company hereby agrees, if applicable, to solicit Holders of Corporate Units to timely instruct the Purchase Contract Agent as to the exercise of such voting rights in order to enable the Purchase Contract Agent to vote such Notes as attorney-in-fact for the Holders. Notwithstanding anything in this Agreement to the contrary, in the event that such Notes are held by or through DTC or another Depository, the exercise of a Holder's right to vote shall occur in conformity with the Applicable Procedures and standing arrangements between DTC or such Depository and the Company or the Purchase Contract Agent.

(b) The Holders of Corporate Units and the Holders of Treasury Units, in their capacity as such Holders, shall have no voting or other rights in respect of the Common Stock.

(c) Notwithstanding anything herein to the contrary, with respect to any Global Certificate held through DTC (or a nominee thereof), each Person holding a beneficial interest in such Global Certificate may be considered to be a "Holder" of Notes underlying Pledged Applicable Ownership Interests in Notes for purposes of voting on the matters relating thereto (for example, such Person holding a beneficial interest in such Global Certificate may consent to any waiver or amendment directly without requiring the participation of DTC or its nominee); it being understood that if such Person holding a beneficial interest in such Global Certificate is authorized pursuant to an official DTC proxy, or if the Purchase Contract Agent receives evidence satisfactory to the Purchase Contract Agent (in its sole discretion) that (a) such Person holds the beneficial interests in such Global Certificate that it purports to vote (such evidence of ownership may include a securities position or participant list or other information obtained from DTC) and (b) such beneficial interest in such Global Certificate shall remain so owned for purposes of such vote, then the Purchase Contract Agent may recognize such Person for purposes of voting.

(d) In connection with any vote of the Holders as required under the terms hereof, the Purchase Contract Agent may on behalf of and at the expense of the Company appoint an independent third-party solicitation agent (the "**Solicitation Agent**") to conduct any solicitation of consents as required under the terms hereof. The Solicitation Agent shall report the results of any such solicitation taken under the terms hereof to the Purchase Contract Agent to enable the Purchase Contract Agent to exercise the voting rights of such Holders as the attorney-in-fact for such Holders. In the absence of gross negligence or willful misconduct by the Purchase Contract Agent, the Purchase Contract Agent may conclusively rely and shall be fully protected in acting or refraining from acting upon the results provided to it by such Solicitation Agent.

Section 4.04 *Payments and Deliveries to Purchase Contract Agent*. The Securities Intermediary shall use commercially reasonable efforts to deliver any payments required to be made by it to the Purchase Contract Agent hereunder to the account designated by the Purchase Contract Agent for such purpose not later than 10:00 a.m., New York City time, on the Business Day such payment is received by the Securities Intermediary; provided, however, that if such payment is received on a day that is not a Business Day or after 10:00 a.m., New York City time, on a Business Day, then the Securities Intermediary shall use commercially reasonable efforts to deliver such payment to the Purchase Contract Agent no later than 10:00 a.m., New York City time, on the next succeeding Business Day. In connection with the Transfer of any Treasury Securities to the Purchase Contract Agent hereunder, the Collateral Agent shall cause such Transfer to be made at the Corporate Trust Office.

Section 4.05 *Payments Held in Trust*. If the Purchase Contract Agent or any Holder shall receive any payments on account of the repayment of principal with respect to financial assets credited to the Collateral Account (other than, for the avoidance of doubt, interest on the Notes or distributions on the portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (ii) of the definition thereof)) and not released therefrom in accordance with this Agreement, the Purchase Contract Agent or such Holder shall, upon receipt of an Officer's Certificate of the Company so directing, promptly deliver such payments to the Securities Intermediary for credit to the Collateral Account or, if the Obligations have become due and payable, to the Company for application to the Obligations of the applicable Holder or Holders.

ARTICLE V
THE PURCHASE CONTRACTS

Section 5.01 *Purchase of Shares of Common Stock*. Each Purchase Contract shall obligate the Holder of the related Unit to purchase, and the Company to issue and deliver, on the Purchase Contract Settlement Date at a price equal to the Stated Amount (the "Purchase Price"), a number of shares of Common Stock equal to the Settlement Rate, together with Cash, if applicable, in lieu of any fractional share of Common Stock in accordance with Section 5.09, unless an Early Settlement Date, a Fundamental Change Early Settlement or a Termination Event with respect to the Units of which such Purchase Contract is a part shall have occurred, subject to Section 5.05(b)(ii).

The "**Settlement Rate**" is determined by the Company as follows:

(i) If the Applicable Market Value is equal to or greater than the Threshold Appreciation Price, the Settlement Rate will be 0.7265 shares of Common Stock (such Settlement Rate, subject to adjustment as provided in Section 5.05(a), being referred to as the "**Minimum Settlement Rate**");

(ii) if the Applicable Market Value is less than the Threshold Appreciation Price but greater than $58.5686 (subject to adjustment, as set forth in Section 5.05(a)(vii)(1), the "**Reference Price**"), the Settlement Rate will be a number of shares of Common Stock equal to the Stated Amount divided by the Applicable Market Value, rounded to the nearest 1/10,000th of a share; and

(iii) if the Applicable Market Value is less than or equal to the Reference Price, the Settlement Rate will be 0.8537 shares of Common Stock (such Settlement Rate, subject to adjustment as provided in Section 5.05(a), being referred to as the "**Maximum Settlement Rate**").

The Maximum Settlement Rate, the Minimum Settlement Rate and the Applicable Market Value are subject to adjustment as provided in Section 5.05 (and, in the case of each Fixed Settlement Rate, shall be rounded upward or downward to the nearest 1/10,000th of a share).

The "**Applicable Market Value**" means, as determined by the Company, the average VWAP of the Common Stock on each Trading Day during the Market Value Averaging Period, subject to Section 5.05(b)(i); *provided* that if 20 Trading Days for the Common Stock have not occurred during the Market Value Averaging Period, all remaining Trading Days shall be deemed to occur on the third Scheduled Trading Day immediately prior to the Purchase Contract Settlement Date and the VWAP for each of the remaining Trading Days will be the VWAP on such third Scheduled Trading Day or, if such day is not a Trading Day, the Closing Price of the Common Stock as of such day.

The "**VWAP**" means, in respect of Common Stock, for the relevant Trading Day, the per share volume weighted average price on the principal exchange or quotation system on which the Common Stock is listed or admitted for trading as displayed under the heading Bloomberg VWAP on Bloomberg page "HTO US <Equity> AQR" (or its equivalent successor if that page is not available) in respect of the period from the scheduled open of trading on the relevant Trading Day until the scheduled close of trading on the relevant Trading Day (or if such volume weighted-average price is unavailable, the market price of one share of Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained by the Company for this purpose). Following a Fundamental Change described in clause (ii) of such definition where the holders of Common Stock receive only Cash in such Fundamental Change, the "VWAP" shall be equal to the Cash amount paid per share of Common Stock.

The "**Market Value Averaging Period**" means the 20 consecutive Scheduled Trading Days ending on, and including, the third Scheduled Trading Day immediately preceding the Purchase Contract Settlement Date.

The "**Closing Price**" per share of Common Stock means, on any date of determination, the closing sale price or, if no closing sale price is reported, the last reported sale price per share of Common Stock on the principal U.S. securities exchange on which the Common Stock is listed, or if the Common Stock is not so listed on a U.S. securities exchange, the average of the last quoted bid and ask prices for the Common Stock in the over-the-counter market as reported by OTC Markets Group Inc. or similar organization, or, if those bid and ask prices are not available, the market value of the Common Stock on that date as determined by a nationally recognized independent investment banking firm retained by the Company for this purpose.

A "**Trading Day**" means, for purposes of determining a VWAP or Closing Price, a day (i) on which the principal exchange or quotation system on which the Common Stock is listed or admitted for trading is scheduled to be open for business and (ii) on which there has not occurred or does not exist a Market Disruption Event.

A "**Market Disruption Event**" means any of the following events:

(i) any suspension of, or limitation imposed on, trading by the principal exchange or quotation system on which the Common Stock is listed or admitted for trading during the one-hour period prior to the close of trading for the regular trading session on such exchange or quotation system (or, for purposes of determining a VWAP, any period or periods prior to 1:00 p.m., New York City time, aggregating one half hour or longer) and whether by reason of movements in price exceeding limits permitted by the relevant exchange or quotation system or otherwise relating to the Common Stock or in futures or options contracts relating to the Common Stock on the relevant exchange or quotation system; or

(ii) any event (other than a failure to open or, except for purposes of determining a VWAP, a closure as described below) that disrupts or impairs the ability of market participants during the one-hour period prior to the close of trading for the regular trading session on the principal exchange or quotation system on which the Common Stock is listed or admitted for trading (or, for purposes of determining a VWAP, any period or periods prior to 1:00 p.m., New York City time, aggregating one half hour or longer) in general to effect transactions in, or obtain market values for, the Common Stock on the relevant exchange or quotation system or futures or options contracts relating to the Common Stock on any relevant exchange or quotation system; or

(iii) the failure to open of the principal exchange or quotation system on which futures or options contracts relating to the Common Stock are traded or, except for purposes of determining a VWAP, the closure of such exchange or quotation system prior to its respective scheduled closing time for the regular trading session on such day (without regard to after hours or other trading outside the regular trading session hours) unless such earlier closing time is announced by such exchange or quotation system at least one hour prior to the earlier of the actual closing time for the regular trading session on such day and the submission deadline for orders to be entered into such exchange or quotation system for execution at the actual closing time on such day.

(b) Each Holder of a Corporate Unit or a Treasury Unit, by purchasing such Unit shall be deemed to have:

(i) irrevocably appointed the Purchase Contract Agent as its attorney-in-fact to enter into and perform the related Purchase Contract, this Agreement and the Remarketing Agreement, substantially in the form of Exhibit P hereto, on its behalf and in the name of and on behalf of such Holder (including, without limitation, the execution of Certificates on behalf of such Holder);

(ii) agreed to be bound by the terms and provisions of such Unit, including, but not limited to, the terms and provisions of the Purchase Contract and this Agreement, for so long as such Holder remains a Holder of such Unit;

(iii) consented to, and agreed to be bound by, the Pledge of such Holder's right, title and interest in and to its applicable portion of the Collateral, including the Pledged Applicable Ownership Interests in Notes, the Pledged Applicable Ownership Interests in the Treasury Portfolio, the Pledged Treasury Securities or the Put Price, as the case may be, pursuant to this Agreement, and the delivery of such Collateral by the Purchase Contract Agent to the Collateral Agent; and

(iv) agreed that to the extent and in the manner provided herein, but subject to the terms hereof, on the Purchase Contract Settlement Date, Proceeds of the Pledged Applicable Ownership Interests in Notes, the Pledged Applicable Ownership Interests in the Treasury Portfolio or the Pledged Treasury Securities, as applicable, equal to the Purchase Price shall be paid by the Collateral Agent to the Company in satisfaction of such Holder's obligations under the Purchase Contract included in such Unit.

(c) [Reserved].

(d) Upon registration of transfer of a Certificate, the transferee shall be bound (without the necessity of any other action on the part of such transferee) by the terms of this Agreement and the Purchase Contracts underlying such Certificate and the transferor shall be released from the obligations under this Agreement and the Purchase Contracts underlying the Certificate so transferred. The Company covenants and agrees, and each Holder of a Certificate, by its acceptance thereof, likewise shall be deemed to have covenanted and agreed, to be bound by the provisions of this paragraph.

(e) Promptly after the calculation of the Settlement Rate and the Applicable Market Value, the Company shall give the Purchase Contract Agent notice thereof. All calculations and determinations by the Company of the Settlement Rate and the Applicable Market Value and any adjustments to the Reference Price or the Threshold Appreciation Price shall be made by the Company based on its good faith calculations, and the Purchase Contract Agent shall have no responsibility with respect thereto.

(f) If a Market Disruption Event occurs on any Scheduled Trading Day during the Market Value Averaging Period, the Company shall give the Holders and the Purchase Contract Agent written notice thereof on the calendar day on which such event occurs.

Section 5.02 Remarketing.

(a) Optional Remarketing. Unless a Termination Event has occurred, the Company may elect, at its option, to engage the Remarketing Agent, pursuant to the terms of the Remarketing Agreement, to remarket the aggregate Notes underlying the aggregate Applicable Ownership Interests in Notes that are components of Corporate Units, along with any Separate Notes, the holders of which have elected to participate in such remarketing pursuant to the Indenture and Section 5.02(d), on any Optional Remarketing Date occurring during the Period for Optional Remarketing (any such period of up to 15 Business Days selected by the Company for an Optional Remarketing, an "**Optional Remarketing Period**").

(i) The Company shall request that the Depository notify the Depository Participants holding Corporate Units, Treasury Units and Separate Notes of the Company's election to conduct an Optional Remarketing no later than five Business Days prior to the first day of the applicable Optional Remarketing Period, and the Company shall provide a copy of such request to the Purchase Contract Agent, the Collateral Agent and the Custodial Agent.

(ii) If the Company elects to conduct an Optional Remarketing on an Optional Remarketing Date, by 4:00 p.m., New York City time, on the Business Day immediately preceding the first day of the applicable Optional Remarketing Period, the Company shall notify the Purchase Contract Agent and the Collateral Agent in writing, and, upon receipt of such notice, the Purchase Contract Agent shall notify the Remarketing Agent in writing of the aggregate principal amount of Notes underlying the Pledged Applicable Ownership Interests in Notes that are a part of the Corporate Units to be remarketed, and the Custodial Agent shall notify in writing the Remarketing Agent of the aggregate principal amount of Separate Notes (if any) to be remarketed pursuant to Section 5.02(d). Pursuant to the Remarketing Agreement, upon receipt of such notices from the Purchase Contract Agent and the Custodial Agent, the Remarketing Agent will use its commercially reasonable efforts to remarket such Notes at the applicable Remarketing Price.

(iii) [Reserved].

(iv) [Reserved].

(v) If the Remarketing Agent is able to remarket the Notes being remarketed for at least the applicable Remarketing Price in any Optional Remarketing in accordance with the Remarketing Agreement (a "**Successful Optional Remarketing**"), the Company shall notify the Collateral Agent and the Custodial Agent thereof in writing, and the Collateral Agent shall cause the Securities Intermediary to Transfer to the Remarketing Agent the remarketed Notes underlying the Pledged Applicable Ownership Interests in Notes upon confirmation of deposit to the Collateral Account of proceeds of such Successful Optional Remarketing attributable to such Notes underlying the Pledged Applicable Ownership Interests in Notes, and the Custodial Agent shall Transfer the remarketed Separate Notes to the Remarketing Agent upon confirmation of deposit to the account established by the Custodial Agent for the purpose of receiving such proceeds (the "**Separate Notes Account**") of receipt of proceeds of such Successful Optional Remarketing attributable to such Separate Notes. Settlement shall occur on the Optional Remarketing Settlement Date. Upon deposit in the Collateral Account of such proceeds attributable to the remarketed Notes underlying the Pledged Applicable Ownership Interests in Notes, the Collateral Agent shall (A) unless the Treasury Portfolio shall consist of Cash, (x) instruct the Securities Intermediary to apply an amount equal to the Treasury Portfolio Purchase Price to purchase the Treasury Portfolio from the dealer identified by the Quotation Agent pursuant to the definition of "Treasury Portfolio Purchase Price" (the amount and issue of the U.S. Treasury securities (or principal or interest strips thereof) constituting the Treasury Portfolio to be determined by the Remarketing Agent, who shall provide such information to the Collateral Agent and the Quotation Agent, who will then determine, and notify the Collateral Agent of, the Treasury Portfolio Purchase Price) and (y) credit to the Collateral Account the Applicable Ownership Interests in the Treasury Portfolio, (B) if the Treasury Portfolio shall consist of Cash, credit to the Collateral Account Cash in an amount equal to the Treasury Portfolio Purchase Price and (C) promptly remit any remaining portion of such proceeds to the Purchase Contract Agent for payment to the Holders of Corporate Units, whereupon the Purchase Contract Agent shall make such payment on the Optional Remarketing Settlement Date to such Holders *pro rata* in accordance with their interests. With respect to any Separate Notes remarketed, upon receipt of proceeds of such Successful Optional Remarketing attributable to the remarketed Separate Notes, the Custodial Agent shall remit to each holder of Separate Notes included in the Optional Remarketing, an amount in Cash equal to the Remarketing Price Per Note for each $1,000 principal amount of such Notes held by such holder in accordance with the instructions by such holders provided in the form of Exhibit K.

(vi) If there is a Successful Optional Remarketing, the Company shall cause a notice of the Successful Optional Remarketing to be published no later than 9:00 a.m., New York City time, on the Business Day immediately following the Optional Remarketing Date. This notice shall include the Reset Rate. This notice shall be validly published by furnishing such information on a Current Report on Form 8-K or by making a timely release to any appropriate news agency, including Bloomberg Business News and the Dow Jones News Service.

(vii) Following the occurrence of a Successful Optional Remarketing, the portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of such term) will be substituted as Collateral for the Pledged Applicable Ownership Interests in Notes and will be credited to the Collateral Account in accordance with the terms hereof to secure the Obligations of each Holder of Corporate Units, and the Holders of Corporate Units and the Collateral Agent shall have such security interests, rights and obligations with respect to such portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of such term) as the Holder of Corporate Units and the Collateral Agent had in respect of the Pledged Applicable Ownership Interests in Notes and the underlying Notes, subject to the Pledge thereof. Unless the context otherwise requires, any reference in this Agreement or the Certificates to the Pledged Applicable Ownership Interests in Notes shall thereupon be deemed to be a reference to such portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of such term). The Company may cause to be made in any Corporate Units Certificates thereafter to be issued such change in phraseology and form (but not in substance) as may be appropriate to reflect the substitution of the portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of such term) for the Pledged Applicable Ownership Interests in Notes as Collateral. On the Purchase Contract Settlement Date, the Collateral Agent shall instruct the Securities Intermediary to (1) remit to the Company from the proceeds at maturity of the portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of such term) the amount necessary to satisfy in full the Obligations of Holders of the related Corporate Units to pay the Purchase Price for the shares of Common Stock under the related Purchase Contracts and (2) promptly remit the balance of such proceeds, if any, to the Purchase Contract Agent for payment to the Holders of such Corporate Units, whereupon the Purchase Contract Agent shall make such payment on the Purchase Contract Settlement Date to such Holders pro rata in accordance with their interests. In addition, on each of August 1, 2029 (if the Optional Remarketing Settlement Date occurs prior to August 1, 2029) and on the Purchase Contract Settlement Date, the Collateral Agent shall instruct the Securities Intermediary to remit the proceeds at maturity of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (ii) of the term Treasury Portfolio if the Optional Remarketing Settlement Date occurs prior to August 1, 2029 or clause (iii) of the term Treasury Portfolio if the Optional Remarketing Settlement Date occurs on or after August 1, 2029, as applicable) to the Purchase Contract Agent for payment to the Holders of such Corporate Units, whereupon the Purchase Contract Agent shall make such payment on August 1, 2029 (if the Optional Remarketing Settlement Date occurs prior to August 1, 2029) and on the Purchase Contract Settlement Date, as applicable, to such Holders pro rata in accordance with their interests.

(viii) Following a Successful Optional Remarketing, the Remarketing Agent shall remit (1) the proceeds attributable to the remarketed Notes underlying the Pledged Applicable Ownership Interests in Notes to the Securities Intermediary for credit to the Collateral Account and (2) the proceeds attributable to the remarketed Separate Notes to the Custodial Agent for the benefit of the Holders of Separate Notes that had their Notes remarketed.

(ix) If, in spite of its commercially reasonable efforts, the Remarketing Agent cannot remarket the Notes as set forth above during the applicable Optional Remarketing Period at a price not less than the applicable Remarketing Price or a condition precedent set forth in the Remarketing Agreement is not fulfilled, such Optional Remarketing will be deemed to have failed (a "**Failed Optional Remarketing**").

(x) If the Company elects to remarket the Notes during any Optional Remarketing Period and a Successful Optional Remarketing has not occurred on or prior to the last day of the applicable Optional Remarketing Period, the Company shall cause notice of the Failed Optional Remarketing to be provided to the Custodial Agent, the Collateral Agent and the Purchase Contract Agent and to be published no later than 9:00 a.m., New York City time, on the Business Day immediately following the last date of the applicable Optional Remarketing Period. Any such notice shall be validly published by furnishing such information on a Current Report on Form 8-K or by making a timely release to any appropriate news agency, including Bloomberg Business News and the Dow Jones News Service.

(xi) Promptly after a Failed Optional Remarketing and receipt of notice thereof from the Company, the Custodial Agent will return Separate Notes that were to be subject to such Optional Remarketing to the appropriate holders pursuant to the instructions provided in the form of Exhibit K.

(xii) The Company will pay the Remarketing Fee in connection with any Successful Optional Remarketing. Holders whose Notes are part of a Successful Optional Remarketing will not be responsible for payment of the Remarketing Fee.

(xiii) On each Business Day during any Optional Remarketing Period, the Company has the right in its sole and absolute discretion to determine whether or not an Optional Remarketing will be attempted. At any time and from time to time during any Optional Remarketing Period, prior to the announcement of a Successful Optional Remarketing, the Company has the right to postpone such Optional Remarketing in the Company's sole and absolute discretion.

(b) Final Remarketing. Unless a Termination Event or a Successful Optional Remarketing has previously occurred, in order to dispose of the Notes underlying Pledged Applicable Ownership Interests in Notes of any Holders of Corporate Units who have not notified the Purchase Contract Agent of their intention to effect a Cash Settlement as provided in Section 5.03(a)(i), or who have so notified the Purchase Contract Agent but failed to make such payment as required by Section 5.03(a)(ii), the Company shall engage the Remarketing Agent, pursuant to the terms of the Remarketing Agreement, to remarket such Notes, along with any Separate Notes, the holders of which have elected to participate in a Final Remarketing pursuant to Section 5.02(d), over a period of one or more days selected by the Company that fall during the Final Remarketing Period.

(i) The Company shall request that the Depository notify the Depository Participants holding Corporate Units, Treasury Units and Separate Notes of the Final Remarketing no later than seven calendar days prior to the first day of the Final Remarketing Period, and the Company shall provide a copy of such request to the Purchase Contract Agent, the Collateral Agent and the Custodial Agent. In such notice, the Company shall set forth the dates of the Final Remarketing Period, the applicable procedures for holders of Separate Notes to participate in the Final Remarketing, the applicable procedures for Holders of Corporate Units to create Treasury Units, the applicable procedures for Holders of Treasury Units to recreate Corporate Units, the applicable procedures for Holders of Corporate Units to effect Early Settlement with respect to their Purchase Contracts and any other applicable procedures, including the procedures that must be followed by a holder of a Separate Note in the case of a Failed Remarketing if such holder of Separate Notes wishes to exercise its Put Right.

(ii) The Purchase Contract Agent, based on the notices specified pursuant to Section 5.03(a)(iv), shall notify the Remarketing Agent in writing, promptly after 4:00 p.m., New York City time, on the Business Day immediately preceding the first day of the Final Remarketing Period, of the aggregate principal amount of Notes underlying the Pledged Applicable Ownership Interests in Notes that are to be remarketed, and the Custodial Agent shall notify in writing the Remarketing Agent of the aggregate principal amount of Separate Notes (if any) to be remarketed pursuant to Section 5.02(d). Upon receipt of notice from the Purchase Contract Agent and the Custodial Agent, in each case, as set forth in this Section 5.02(b)(iii), the Remarketing Agent shall, on each Remarketing Date in the Final Remarketing Period, use commercially reasonable efforts to remarket, as provided in the Remarketing Agreement, such Notes and such Separate Notes at the applicable Remarketing Price.

(iii) [Reserved].

(iv) If the Remarketing Agent is able to remarket such Notes and the Separate Notes (if any) for at least the applicable Remarketing Price in any Final Remarketing in accordance with the Remarketing Agreement (a "**Successful Final Remarketing**"), the Company shall notify the Collateral Agent and the Custodial Agent thereof and upon receipt of such notice, the Collateral Agent shall cause the Securities Intermediary to Transfer to the Remarketing Agent the remarketed Notes underlying the Pledged Applicable Ownership Interests in Notes upon confirmation of deposit to the Collateral Account of proceeds of such Successful Final Remarketing attributable to such Notes, and the Custodial Agent shall Transfer the remarketed Separate Notes to the Remarketing Agent upon confirmation of deposit to the Separate Notes Account of proceeds of such Successful Final Remarketing attributable to such Separate Notes. Settlement shall occur on the Remarketing Settlement Date. Upon deposit in the Collateral Account of such proceeds attributable to the remarketed Notes underlying the Pledged Applicable Ownership in Notes, the Collateral Agent shall, on the Purchase Contract Settlement Date, instruct the Securities Intermediary to (1) remit to the Company a portion of such proceeds equal to the aggregate principal amount of remarketed Notes underlying Pledged Applicable Ownership Interests in Notes to satisfy in full the Obligations of Holders of the related Corporate Units to pay the Purchase Price for the shares of Common Stock under the related Purchase Contracts and (2) promptly remit the balance of such proceeds to the Purchase Contract Agent for payment to the Holders of such Corporate Units, whereupon the Purchase Contract Agent shall make such payment on the Purchase Contract Settlement Date to such Holders *pro rata* in accordance with their interests. In addition, on the Purchase Contract Settlement Date, the Securities Intermediary shall deliver to the Collateral Agent for distribution to the Holders of Corporate Units who have elected Cash Settlement, and paid the Purchase Price as required by Section 5.03(a)(ii), the Notes underlying the Applicable Ownership Interests in Notes underlying such Corporate Units. With respect to any Separate Notes remarketed, upon receipt of proceeds attributable to remarketed Separate Notes, the Custodial Agent shall remit such proceeds of the Successful Final Remarketing received from the Remarketing Agent *pro rata* to the holders of such Separate Notes on the Purchase Contract Settlement Date in accordance with the instructions provided by such holders in the form of Exhibit K.

(v) Following a Successful Final Remarketing, the Remarketing Agent shall remit (1) the proceeds attributable to the remarketed Notes underlying the Pledged Applicable Ownership Interests in Notes to the Securities Intermediary for credit to the Collateral Account and (2) the proceeds attributable to the remarketed Separate Notes to the Custodial Agent for the benefit of the Holders of Separate Notes that had their Notes remarketed.

(vi) If there is a Successful Final Remarketing, the Company shall cause a notice of the Successful Final Remarketing to be provided to the Purchase Contract Agent, the Collateral Agent and the Custodial Agent and to be published no later than 9:00 a.m., New York City time, on the Business Day immediately following the Final Remarketing Date. This notice shall include the Reset Rate. This notice shall be validly published by furnishing such information on a Current Report on Form 8-K or by making a timely release to any appropriate news agency, including Bloomberg Business News and the Dow Jones News Service.

(vii) In connection with any Successful Final Remarketing, the Company shall cause all accrued and unpaid interest to be paid to the Holders of the Notes, as of the relevant Regular Record Date (as defined in the Indenture) (whether or not such Notes were remarketed in such Successful Final Remarketing), on the Purchase Contract Settlement Date in Cash.

(viii) If, in spite of its commercially reasonable efforts, the Remarketing Agent cannot remarket the Notes during the Final Remarketing Period at a price equal to or greater than the applicable Remarketing Price or a condition precedent set forth in the Remarketing Agreement is not fulfilled or a Successful Final Remarketing has not occurred for any other reason, the Remarketing will be deemed to have failed (a "**Failed Final Remarketing**").

Following a Failed Final Remarketing, as of the Purchase Contract Settlement Date, each Holder of any Pledged Applicable Ownership Interests in Notes, unless such Holder has (A) provided written notice in substantially the form of Exhibit M prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the Purchase Contract Settlement Date of its intention to settle the related Purchase Contract with separate Cash, (B) surrendered the Certificate evidencing the Corporate Units (if they are in certificated form) or the related Book-Entry Interests, to the Purchase Contract Agent prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the Purchase Contract Settlement Date and (C) prior to 4:00 p.m., New York City time, on the Business Day immediately preceding the Purchase Contract Settlement Date delivered the Purchase Price in Cash to the Securities Intermediary for deposit in the Collateral Account by certified or cashier's check or wire transfer in immediately available funds payable to or upon the order of the Securities Intermediary (which settlement may only be effected in integral multiples of 20 Corporate Units), shall be deemed to have exercised such Holder's Put Right with respect to the Notes underlying such Pledged Applicable Ownership Interests in Notes and to have elected to apply the proceeds of the exercise of the Put Right against such Holder's obligation to pay the aggregate Purchase Price for the shares of Common Stock to be issued under the related Purchase Contracts in full satisfaction of such Holder's Obligations under such Purchase Contracts. Following such application, each such Holder's Obligations will be deemed to be satisfied in full, and the Collateral Agent shall cause the Securities Intermediary to release the Notes underlying such Pledged Applicable Ownership Interests in Notes from the Collateral Account and shall promptly transfer such Notes to the Company.

Upon (x) receipt by the Collateral Agent of a notice from the Purchase Contract Agent in substantially the form of Exhibit N promptly after the receipt by the Purchase Contract Agent of a notice from a Holder of Corporate Units that such Holder has elected, in accordance with the first sentence of the immediately preceding paragraph, to settle the related Purchase Contract with separate Cash and (y) payment by such Holder to the Securities Intermediary for credit to the Collateral Account of the Purchase Price in accordance with the first sentence of the immediately preceding paragraph, in lieu of exercise of such Holder's Put Right, the Securities Intermediary shall give the Purchase Contract Agent and the Collateral Agent notice of the receipt of such payment in substantially the form of Exhibit O and the Collateral Agent shall, and is hereby authorized to, or to cause the Securities Intermediary to (X) deposit the separate Cash received from such Holder in the Collateral Account and, if the Company so requests in writing and the Collateral Agent and the Securities Intermediary consent thereto, invest such separate Cash received in Permitted Investments consistent with the written instructions of the Company with respect to Cash Settlement, (Y) promptly release from the Pledge the Notes underlying the Applicable Ownership Interests in Notes related to the Corporate Units as to which such Holder has paid such separate Cash and (Z) promptly Transfer all such Notes to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent in accordance with the terms provided for herein, in each case, free and clear of the Pledge created hereby, whereupon the Purchase Contract Agent shall Transfer such Notes in accordance with written instructions provided by the Holder thereof or, if no such instructions are given to the Purchase Contract Agent by the Holder, the Purchase Contract Agent shall hold such Notes, and any interest payment thereon, in the name of the Purchase Contract Agent or its nominee in trust for the benefit of such Holder until the expiration of the time period specified in the relevant abandoned property laws of the state where such Notes and interest payments thereon, if any, are held. On the Purchase Contract Settlement Date, the Collateral Agent shall, and is hereby authorized to, (A) instruct the Securities Intermediary to remit to the Company the separate Cash amount or such portion of the proceeds of such Permitted Investments as is equal to the aggregate Purchase Price under all Purchase Contracts in respect of which separate Cash has been paid as provided in this Section 5.02(b)(ix), as the case may be, to the Company, and (B) release any amounts in excess of such amount earned from such Permitted Investments (if any) to the Purchase Contract Agent for distribution to the Holders who have paid such separate Cash *pro rata* in proportion to the amount paid by such Holders under this Section 5.02(b)(ix), as adjusted to reflect the period of time that each such Holder's Cash was invested in such Permitted Investments. For the avoidance of doubt, nothing in this Section 5.02(b)(ix) shall prevent holders of Separate Notes from exercising their Put Right after a Failed Final Remarketing.

(ix) The Company has the right to postpone the Final Remarketing in the Company's sole and absolute discretion on any day prior to the last three Business Days of the Final Remarketing Period.

(x) If a Successful Remarketing has not occurred on or prior to the last day of the Final Remarketing Period, the Company shall cause a notice of the Failed Remarketing to be provided to the Purchase Contract Agent, the Collateral Agent and the Custodial Agent and to be published no later than 9:00 a.m., New York City time, on the Business Day immediately following the last day of the Final Remarketing Period. This notice shall be validly published by furnishing such information on a Current Report on Form 8-K or by making a timely release to any appropriate news agency, including Bloomberg Business News and the Dow Jones News Service.

(xi) The Company will pay the Remarketing Fee in connection with any Successful Final Remarketing. Holders whose Notes are part of a Successful Final Remarketing will not be responsible for payment of the Remarketing Fee.

(xii) Following the occurrence of a Successful Final Remarketing, proceeds attributable to the remarketed Notes underlying the Pledged Applicable Ownership Interests in Notes will be substituted as Collateral for the Pledged Applicable Ownership Interests in Notes and will be credited to the Collateral Account in accordance with the terms hereof to secure the Obligations of each Holder of Corporate Units, and the Collateral Agent shall have such security interests, rights and obligations with respect to such proceeds as the Collateral Agent had in respect of the Pledged Applicable Ownership Interests in Notes.

(c) [Reserved].

(d) At any time following notice by the Company of a Remarketing, other than during a Blackout Period, holders of Separate Notes may elect to have their Separate Notes remarketed in such Remarketing in the same manner as the Notes included in Corporate Units by delivering their Separate Notes along with a notice of this election, substantially in the form of Exhibit K, to the Custodial Agent. The Custodial Agent shall hold the Separate Notes in an account separate from the Collateral Account in which any Pledged Applicable Ownership Interests in Notes and/or any Pledged Treasury Securities shall be held. Holders electing to have their Separate Notes remarketed shall also have the right to withdraw the election, other than during a Blackout Period, by written notice to the Custodial Agent, substantially in the form of Exhibit L, at any time prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Applicable Remarketing Period. In the event of a Successful Remarketing during an Optional Remarketing Period, each holder of Separate Notes that elects to have its Notes remarketed shall receive for each $1,000 principal amount of Notes, the Remarketing Price Per Note. In the event of a Successful Remarketing during the Final Remarketing Period, each holder of Separate Notes that elects to have its Notes remarketed shall receive its *pro rata* portion of the proceeds of such Successful Remarketing attributable to remarketed Separate Notes pursuant to Section 5.02(b)(v), which shall be, for each $1,000 principal amount of Notes, at least equal to $1,000 in Cash. Any accrued and unpaid interest on such Notes shall be paid in Cash by the Company on the Purchase Contract Settlement Date.

(e) For the avoidance of doubt, the right of each holder of the Notes underlying the aggregate Applicable Ownership Interests in Notes that are components of Corporate Units (who, in the case of a Final Remarketing, have not elected Cash Settlement, and paid the Purchase Price in Cash to the Securities Intermediary, pursuant to Section 5.03) and the Separate Notes, the holders of which have elected to participate in any Remarketing, to have such Notes remarketed during the Applicable Remarketing Period and sold on the Optional Remarketing Date or the Final Remarketing Date, as the case may be, shall be subject to the conditions that (i) (1) the Remarketing Agent conducts an Optional Remarketing or (2) in the case of a Final Remarketing, that no Successful Optional Remarketing has occurred, each pursuant to the terms of this Agreement, (ii) a Termination Event has not occurred prior to the Optional Remarketing Date or the Final Remarketing Date, as the case may be, (iii) the Remarketing Agent is able to find a purchaser or purchasers for such Notes at the applicable Remarketing Price based on the Reset Rate and (iv) each condition precedent to settlement of the remarketed Notes set forth in the Remarketing Agreement is satisfied or waived.

(f) The Company agrees to use its commercially reasonable efforts to ensure that, if required by applicable law, a Registration Statement, including a prospectus, under the Securities Act with regard to the full amount of the Notes to be remarketed in any Remarketing shall be effective with the Securities and Exchange Commission in a form that may be used by the Remarketing Agent in connection with such Remarketing (unless such Registration Statement is not required under the applicable laws and regulations that are in effect at that time or unless the Company conducts any Remarketing in accordance with an exemption under the Securities Act).

Section 5.03 *Cash Settlement; Payment of Purchase Price*. Unless (1) a Termination Event has occurred, (2) a Holder effects an Early Settlement or a Fundamental Change Early Settlement of the underlying Purchase Contract or (3) a Successful Remarketing has occurred, each Holder of Corporate Units shall have the right, subject to the conditions set forth below, to satisfy such Holder's Obligations on the Purchase Contract Settlement Date with separate Cash. Each Holder of Corporate Units who intends to pay separate Cash to satisfy such Holder's Obligations under the Purchase Contract on the Purchase Contract Settlement Date must so notify the Purchase Contract Agent by presenting and surrendering at the Corporate Trust Office (1) the Certificate evidencing the Corporate Units (if they are in certificated form) or the related Book-Entry Interests and (2) a "Notice to Settle with Cash" substantially in the form of Exhibit E completed and executed as indicated, in each case, at any time on or after the date the Company gives notice of a Final Remarketing and prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Final Remarketing Period. Corporate Units Holders may only effect such a Cash Settlement pursuant to this Section 5.03(a) in integral multiples of 20 Corporate Units.

(i) A Holder of a Corporate Unit who has so notified the Purchase Contract Agent of its intention to effect a Cash Settlement in accordance with Section 5.03(a)(i) above shall pay the Purchase Price to the Securities Intermediary for deposit in the Collateral Account prior to 4:00 p.m., New York City time, on the first Business Day immediately preceding the first day of the Final Remarketing Period, in Cash by certified or cashier's check or wire transfer in immediately available funds payable to or upon the order of the Securities Intermediary.

(ii) If a Holder of a Corporate Unit fails to notify the Purchase Contract Agent of its intention to make a Cash Settlement in accordance with Section 5.03(a)(i), or does notify the Purchase Contract Agent as provided in Section 5.03(a)(i) of its intention to pay the Purchase Price with separate Cash but fails to make such payment as required by Section 5.03(a)(ii), such Holder shall be deemed to have consented to the disposition of the Notes underlying the Pledged Applicable Ownership Interests in Notes pursuant to any Remarketing occurring in the Final Remarketing Period as set forth in Section 5.02(b) or to have exercised such Holder's Put Right, in each case, as applicable.

(iii) Promptly after 4:00 p.m., New York City time, on the first Business Day immediately preceding the first day of the Final Remarketing Period, the Purchase Contract Agent, based on notices received by the Purchase Contract Agent pursuant to Section 5.03(a)(i) and notice from the Securities Intermediary regarding Cash received by it prior to such time, shall notify the Collateral Agent of the aggregate principal amount of Notes to be remarketed in any Remarketing occurring in the Final Remarketing Period in a notice substantially in the form of Exhibit J.

(iv) Upon (1) receipt by the Collateral Agent of a notice in the form of Exhibit J from the Purchase Contract Agent (delivered pursuant to clause (iv) above) after the receipt by the Purchase Contract Agent of a notice in the form of Exhibit E from a Holder of Corporate Units that such Holder has elected, in accordance with Section 5.03(a)(i), to effect a Cash Settlement and (2) the payment by such Holder of the Purchase Price in accordance with Section 5.03(a)(ii) above, the Collateral Agent shall:

(A) if the Company so requests in writing, instruct the Securities Intermediary promptly to invest any such Cash in Permitted Investments consistent with the instructions of the Company as provided for below in this Section 5.03(a)(v);

(B) release from the Pledge the Notes underlying the Applicable Ownership Interests in Notes related to the Corporate Units as to which such Holder has effected a Cash Settlement; and

(C) instruct the Securities Intermediary to Transfer all such Notes to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent in accordance with the terms provided for herein, in each case free and clear of the Pledge created hereby, whereupon the Purchase Contract Agent shall promptly Transfer such Notes in accordance with written instructions provided by the Holder thereof or, if no such instructions are given to the Purchase Contract Agent by the Holder, the Purchase Contract Agent shall hold such Notes, and any interest payment thereon, in the name of the Purchase Contract Agent or its nominee in trust for the benefit of such Holder until the expiration of the time period specified in the relevant abandoned property laws of the state where such Notes and interest payments thereon, if any, are held.

The Company shall instruct the Collateral Agent in writing as to the specific investment, which shall be a type of Permitted Investments (if any) in which any such Cash shall be invested; *provided*, however, that if the Company fails to deliver such written instructions by 9:00 a.m., New York City time, on the day such Cash is received by the Securities Intermediary or to be reinvested by the Securities Intermediary, the Collateral Agent may instruct the Securities Intermediary to invest such Cash in the specific investment, which shall be Permitted Investments (if any) which have been designated by the Company in writing from time to time in a standing instruction to the Collateral Agent which shall be effective until revoked or superseded. If no such standing instruction exists or the Securities Intermediary determines in its sole discretion that any such standing instruction is not clear, such funds shall remain uninvested and neither the Collateral Agent nor the Securities Intermediary shall have any liability for payment of interest on such uninvested funds. In no event shall the Collateral Agent or the Securities Intermediary be liable for the selection of Permitted Investments or for investment losses, fees, taxes or other charges incurred thereon or in connection with any reinvestment or liquidation of an investment hereunder. The Collateral Agent and the Securities Intermediary shall have no liability in respect of losses incurred as a result of the failure of the Company to provide timely written investment direction.

On the Purchase Contract Settlement Date, the Collateral Agent shall, and is hereby authorized and directed to, (A) instruct the Securities Intermediary to remit to the Company the separate Cash amount or such portion of the proceeds of such Permitted Investments as is equal to the aggregate Purchase Price under all Purchase Contracts in respect of which Cash Settlement has been effected as provided in this Section 5.03, as the case may be, and (B) release any amounts in excess of such amount earned from such Permitted Investments to the Purchase Contract Agent for distribution to the Holders who have effected Cash Settlement, *pro rata* in proportion to the amount paid by such Holders under Section 5.03(a)(ii), as adjusted by the Company to reflect the period of time that each such Holder's Cash was invested in such Permitted Investments.

(b) In the case of a Treasury Unit or a Corporate Unit (if Applicable Ownership Interests in the Treasury Portfolio have replaced the Applicable Ownership Interests in Notes as a component of such Corporate Unit), if the Pledged Treasury Securities or the appropriate Pledged Applicable Ownership Interests in the Treasury Portfolio held by the Securities Intermediary mature during the period from, and including, the fifth Business Day immediately preceding the Purchase Contract Settlement Date to, and including, the Business Day immediately preceding the Purchase Contract Settlement Date, the principal amount of the Treasury Securities or the appropriate Pledged Applicable Ownership Interests in the Treasury Portfolio received by the Securities Intermediary may be invested in Permitted Investments (if any), which have been designated by the Company in writing from time to time in a standing instruction to the Securities Intermediary which shall be effective until revoked or superseded. If no such standing instruction exists or the Securities Intermediary determines in its sole discretion that any such standing instruction is not clear, such Cash shall remain uninvested. On the Purchase Contract Settlement Date, an amount equal to the Purchase Price for all related Purchase Contracts shall be remitted to the Company as payment of such Holder's Obligations under such Purchase Contracts without receiving any instructions from the Holder. In the event the sum of the Proceeds from either the related Pledged Treasury Securities or the related Pledged Applicable Ownership Interests in the Treasury Portfolio and the Proceeds from such Permitted Investments is in excess of the aggregate Purchase Price, the Collateral Agent shall cause the Securities Intermediary to distribute such excess, when received by the Securities Intermediary, to the Purchase Contract Agent for the benefit of the Holders of the related Treasury Units or Corporate Units, as applicable.

(c) The Obligations of the Holders to pay the Purchase Price are non-recourse obligations and, except to the extent satisfied by Early Settlement, Fundamental Change Early Settlement or Cash Settlement or terminated upon a Termination Event, are payable solely out of the proceeds of any Collateral pledged to secure the Obligations of the Holders, and in no event will Holders be liable for any deficiency between the proceeds of the disposition of Collateral and the Purchase Price.

(d) The Company shall not be obligated to issue any shares of Common Stock in respect of a Purchase Contract or deliver any certificates in respect thereof to the Holder of the related Units unless the Company shall have received payment of the aggregate Purchase Price for the Common Stock to be purchased thereunder in the manner set forth herein (whether under Section 5.01, 5.02, 5.03, 5.05(b)(ii) or 5.08 or otherwise).

Section 5.04 *Issuance of Shares of Common Stock*. Unless a Termination Event, an Early Settlement or a Fundamental Change Early Settlement shall have occurred, subject to Section 5.05(b), on the Purchase Contract Settlement Date, upon the Company's receipt of the aggregate Purchase Price payable on all Outstanding Units in accordance with Section 5.02 or 5.03, the Company shall deliver in book-entry form, for the benefit of the Holders of the Outstanding Units, one or more certificates representing newly issued shares of Common Stock registered in the name of the Purchase Contract Agent (or its nominee) as custodian for the Holders or their designees (such certificates for newly issued shares of Common Stock, together with any dividends or distributions for which a record date and payment date for such dividend or distribution has occurred on or after the Purchase Contract Settlement Date, being hereinafter referred to as the "Purchase Contract Settlement Fund") to which the Holders are entitled hereunder.

Subject to the foregoing, following book-entry transfer of a Unit or surrender of a Certificate, as the case may be, to the Purchase Contract Agent on or after the Purchase Contract Settlement Date, the Early Settlement Date or the date on which the Fundamental Change Early Settlement Right is exercised, as the case may be, together with settlement instructions thereon duly completed and executed, the Holder of the relevant Unit shall on the applicable Settlement Date (or, if later, the date of such book-entry transfer of the Unit or such surrender of the Certificate) be entitled to receive forthwith in exchange therefor book-entry transfer of beneficial interests in, or a certificate representing, that number of newly issued whole shares of Common Stock which such Holder is entitled to receive pursuant to the provisions of this Article V (after taking into account all Units then held by such Holder), together with Cash in lieu of fractional shares as provided in Section 5.09 and, in the case of a settlement on the Purchase Contract Settlement Date, any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund, but without any interest thereon, and the number of Units represented by the Global Certificate shall be appropriately reduced in accordance with Applicable Procedures and standing arrangements between the Depository and the Purchase Contract Agent, or the Certificate so surrendered shall forthwith be cancelled, as the case may be. Such shares shall be registered in the name of, or such book-entry interests therein shall be transferred to the Holder or the Holder's designee as specified in the settlement instructions provided by the Holder to the Purchase Contract Agent. If any beneficial interests of any shares of Common Stock issued in respect of a Purchase Contract are transferred to a Person other than the beneficial owner thereof, no such transfer shall be made unless and until the Person requesting such transfer shall have paid to the Company the amount of any transfer and other taxes (including any applicable stamp taxes) required by reason of such transfer or has established to the satisfaction of the Company that such tax either has been paid or is not payable.

Section 5.05 *Adjustment of each Fixed Settlement Rate*. Each Fixed Settlement Rate shall be subject to the following adjustments:

(i) If the Company pays or makes a dividend or other distribution on the Common Stock in shares of Common Stock, each Fixed Settlement Rate in effect at the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be increased by dividing each Fixed Settlement Rate by a fraction,

(A) the numerator of which shall be the number of shares of the Common Stock outstanding at the close of business on the date fixed for such determination; and

(B) the denominator of which shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution.

Any adjustment made under this clause (i) shall become effective immediately after the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution. 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 determines not to pay or make such dividend or distribution, to the Fixed Settlement Rate that would then be in effect if such dividend or distribution had not been declared.

(ii) If the Company issues to all or substantially all holders of the Common Stock rights, options, warrants or other securities (other than pursuant to a stockholder rights plan or a dividend reinvestment, share purchase or similar plan) entitling them to subscribe for or purchase shares of the Common Stock for a period expiring within 45 days from the date of issuance of such rights, options, warrants or other securities at a price per share of Common Stock less than the Current Market Price calculated as of the date fixed for the determination of stockholders entitled to receive such rights, options, warrants or other securities, each Fixed Settlement Rate in effect at the opening of business on the day following the date fixed for such determination shall be increased by dividing each Fixed Settlement Rate by a fraction,

(A) the numerator of which shall be the number of shares of the Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock which the aggregate consideration expected to be received by the Company upon the exercise of such rights, options, warrants or other securities would purchase at such Current Market Price; and

(B) the denominator of which shall be the number of shares of the Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock so offered for subscription or purchase.

Any increase in the Fixed Settlement Rates made pursuant to this clause (ii) shall become effective immediately after the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such rights, options, warrants or other securities. To the extent such rights, options, warrants or other securities are not exercised or converted prior to their expiration of the exercisability or convertibility thereof (and as a result no additional shares of Common Stock are delivered or issued pursuant to such right, option, warrant or other security), each new Fixed Settlement Rate shall be readjusted, effective as of the date of such expiration, to the Fixed Settlement Rate that would then be in effect had the increase with respect to the issuance of such rights, options, warrants or other securities been made on the basis of delivery or issuance of only the number of shares of Common Stock actually delivered.

For purposes of this clause (ii), in determining whether any rights, options, warrants or other securities entitle the holders thereof to subscribe for or purchase shares of the Common Stock at less than the Current Market Price per share of Common Stock on the date fixed for the determination of stockholders entitled to receive such rights, options, warrants or other securities, and in determining the aggregate price payable to exercise such rights, options, warrants or other securities, there shall be taken into account any consideration the Company receives for such rights, options, warrants or other securities and any amount payable on exercise or conversion thereof, with the value of such consideration, if other than Cash, to be determined in good faith by the Board of Directors.

(iii) If outstanding shares of the Common Stock shall be subdivided, split or reclassified into a greater number of shares of Common Stock, each Fixed Settlement Rate in effect at the opening of business on the day following the day upon which such subdivision, split or reclassification becomes effective shall be proportionately increased, and, conversely, in case outstanding shares of the Common Stock shall each be combined or reclassified into a smaller number of shares of Common Stock, each Fixed Settlement Rate in effect at the opening of business on the day following the day upon which such combination or reclassification becomes effective shall be proportionately reduced.

(iv) If the Company, by dividend or otherwise, distributes to all or substantially all holders of the Common Stock evidences of the Company's indebtedness, assets or securities or any rights, options or warrants (or similar securities) to subscribe for, purchase or otherwise acquire evidences of the Company's indebtedness, other assets or property of the Company or other securities (but excluding any rights, options, warrants or other securities referred to in clause (ii) of this Section 5.05(a), any dividend or distribution paid exclusively in Cash referred to in clause (v) below of this Section 5.05(a) (in each case, whether or not an adjustment to the Fixed Settlement Rates is required by such clause), any dividend paid in shares of capital stock of any class or series, or similar equity interests, of or relating to a Subsidiary or other business unit of the Company in the case of a Spin-Off referred to below, any dividends or distributions referred to in clause (i) of this Section 5.05(a) and any distributions of Exchange Property Units in exchange for, or upon conversion of, the Common Stock in connection with a Reorganization Event), each Fixed Settlement Rate in effect immediately prior to the close of business on the date fixed for the determination of stockholders entitled to receive such dividend or distribution shall be increased by dividing each Fixed Settlement Rate by a fraction,

(A) the numerator of which shall be the Current Market Price calculated as of the date fixed for such determination less the fair market value (as determined in good faith by the Board of Directors) of the portion of the assets, securities or evidences of indebtedness so distributed applicable to one share of the Common Stock; and

(B) the denominator of which shall be such Current Market Price.

Any increase made under the portion of this clause (iv) shall become effective immediately after the close of business on the date fixed for the determination of stockholders entitled to receive such dividend or distribution. Notwithstanding the foregoing, if the fair market value (as determined in good faith by the Board of Directors) of the portion of the assets, securities or evidences of indebtedness so distributed applicable to one share of the Common Stock exceeds the Current Market Price of the Common Stock on the date fixed for the determination of stockholders entitled to receive such distribution, in lieu of the foregoing increase, each Holder shall receive, for each Purchase Contract included in such Holder's Units, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of such distributed assets, securities or evidences of indebtedness that such Holder would have received if such Holder owned a number of shares of the Common Stock equal to the Maximum Settlement Rate on the record date for such dividend or distribution.

In the case of the payment of a dividend or other distribution on the Common Stock of shares of capital stock of any class or series, or similar equity interests, of or relating to a Subsidiary or other business unit of the Company, which are or will, upon issuance, be listed on a U.S. securities exchange or quotation system (a "**Spin-Off**"), each Fixed Settlement Rate in effect immediately before the close of business on the date fixed for determination of shareholders entitled to receive such dividend or distribution will be increased by dividing each Fixed Settlement Rate by a fraction,

(A) the numerator of which is the Current Market Price; and

(B) the denominator of which is such Current Market Price plus the Fair Market Value (determined as set forth below) of those shares of capital stock or similar equity interests so distributed applicable to one share of Common Stock.

The adjustment to each Fixed Settlement Rate under the immediately preceding paragraph will occur on (A) the 10th Trading Day from, and including, the effective date of the Spin-Off; or (B) if the Spin-Off is effected simultaneously with an Initial Public Offering of the securities being distributed in the Spin-Off and the Ex-Date for the Spin-Off occurs on or before the date that the Initial Public Offering price of the securities being distributed in the Spin-Off is determined, the issue date of the securities being offered in such Initial Public Offering. For purposes of this section, "**Initial Public Offering**" means the first time securities of the same class or type as the securities being distributed in the Spin-Off are offered to the public for Cash.

Subject to the immediately following paragraph, the "**Fair Market Value**" of the securities to be distributed to holders of Common Stock means the average of the closing sale prices of those securities on the principal U.S. securities exchange or quotation system on which such securities are listed or quoted at that time over the first 10 Trading Days following the effective date of the Spin-Off. For purposes of such a Spin-Off, the "**Current Market Price**" of the Common Stock means the average of the closing sale prices of the Common Stock on the principal U.S. securities exchange or quotation system on which the Common Stock is listed or quoted at that time over the first 10 Trading Days following the effective date of the Spin-Off.

If, however, an Initial Public Offering of the securities being distributed in the Spin-Off is to be effected simultaneously with the Spin-Off and the Ex-Date for the Spin-Off occurs on or before the date that the Initial Public Offering price of the securities being distributed in the Spin-Off is determined, the "**Fair Market Value**" of the securities being distributed in the Spin-Off means the Initial Public Offering price, while the "**Current Market Price**" of the Common Stock means the closing sale price of the Common Stock on the principal U.S. securities exchange or quotation system on which the Common Stock is listed or quoted at that time on the Trading Day on which the Initial Public Offering price of the securities being distributed in the Spin-Off is determined.

If any dividend or distribution described in this clause (iv) is declared but not so paid or made, the new Fixed Settlement Rates shall be readjusted, as of the date the Board of Directors determines not to pay or make such dividend or distribution, to the Fixed Settlement Rates that would then be in effect if such dividend or distribution had not been declared.

For purposes of this clause (iv) (and subject in all respects to clause (x) below), rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company's capital stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (a) are deemed to be transferred with such shares of the Common Stock; (b) are not exercisable; and (c) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this clause (iv) (and no adjustment to the Fixed Settlement Rates under this clause (iv) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Fixed Settlement Rates shall be made under this clause (iv). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Agreement, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Fixed Settlement Rates under this clause (iv) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Fixed Settlement Rates shall be readjusted as if such rights, options or warrants had not been issued and (y) the Fixed Settlement Rates shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a Cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Fixed Settlement Rates shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of clause (i), clause (ii) and this clause (iv), if any dividend or distribution to which this clause (iv) is applicable also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which clause (i) is applicable (the "**Clause (i) Distribution**"); or

(B) a dividend or distribution of rights, options or warrants to which clause (ii) is applicable (the "**Clause (ii) Distribution**"), then, in either case, (1) such dividend or distribution, other than the Clause (i) Distribution and the Clause (ii) Distribution, shall be deemed to be a dividend or distribution to which this clause (iv) is applicable (the "**Clause (iv) Distribution**") and any Fixed Settlement Rate adjustment required by this clause (iv) with respect to such Clause (iv) Distribution shall then be made, and (2) the Clause (i) Distribution and Clause (ii) Distribution shall be deemed to immediately follow the Clause (iv) Distribution and any Fixed Settlement Rate adjustment required by clause (i) and clause (ii) with respect thereto shall then be made, except that, if determined by the Company (I) the record date of the Clause (i) Distribution and the Clause (ii) Distribution shall be deemed to be the record date of the Clause (iv) Distribution and (II) any shares of Common Stock included in the Clause (i) Distribution or Clause (ii) Distribution shall be deemed not to be "outstanding at the close of business on the date fixed for such determination" within the meaning of clause (i) or clause (ii).

(v) If the Company, by dividend or otherwise, makes distributions to all or substantially all holders of the Common Stock exclusively in Cash during any quarterly period in an amount that exceeds $0.44 per share per quarter in the case of a regular quarterly dividend (such per share amount being referred to as the "Reference Dividend," which shall be adjusted proportionally for any change in frequency of the Company's regular dividends), then immediately after the close of business on the date fixed for determination of the shareholders entitled to receive such distribution, each Fixed Settlement Rate in effect immediately prior to the close of business on such date shall be increased by dividing each Fixed Settlement Rate by a fraction,

(A) the numerator of which shall be equal to the Current Market Price on the date fixed for such determination less the amount, if any, by which the per share amount of the distribution exceeds the Reference Dividend; and

(B) the denominator of which shall be equal to such Current Market Price.

Such increase shall become effective immediately after the close of business on the date fixed for determination of the shareholders entitled to receive such distribution. Notwithstanding the foregoing, if (x) the amount by which the per share amount of the Cash distribution exceeds the Reference Dividend exceeds (y) the Current Market Price of the Common Stock on the date fixed for the determination of stockholders entitled to receive such distribution, in lieu of the foregoing increase, each Holder shall receive, for each Purchase Contract included in such Holder's Units, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of distributed Cash that such Holder would have received if such Holder owned a number of shares of the Common Stock equal to the Maximum Settlement Rate on the record date for such Cash dividend or distribution. If such distribution is declared but not so paid or made, each Fixed Settlement Rate shall be decreased, effective as of the date the Board of Directors determines not to pay or make such dividend or distribution, to the Fixed Settlement Rate that would then be in effect if such dividend or distribution had not been declared.

The Reference Dividend will be subject to an inversely proportional adjustment (determined in the same manner as the adjustment to the Reference Price and Threshold Appreciation Price set forth below in clause (vii) of this Section 5.05(a)) whenever each Fixed Settlement Rate is adjusted, other than pursuant to this clause (v). For the avoidance of doubt, the Reference Dividend shall be zero in the case of a Cash dividend that is not a regular quarterly dividend.

(vi) In the case that a tender offer or exchange offer (other than an odd lot tender offer) made by the Company or any Subsidiary thereof for all or any portion of shares of the Common Stock shall expire and such tender or exchange offer (as amended through the expiration thereof) shall require the payment to shareholders (based on the acceptance (up to any maximum specified in the terms of the tender offer or exchange offer) of shares of the Common Stock in such tender offer or exchange offer) of an aggregate consideration having a fair market value per share of the Common Stock that exceeds the Closing Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender offer or exchange offer, then, immediately prior to the opening of business on the day after the date of the last time (the "**Expiration Time**") tenders or exchanges could have been made pursuant to such tender offer or exchange offer (as amended through the expiration thereof), each Fixed Settlement Rate in effect immediately prior to the close of business on the date of the Expiration Time shall be increased by dividing each Fixed Settlement Rate, by a fraction,

(A) the numerator of which shall be equal to (x) the product of (i) the Current Market Price on the date of the Expiration Time and (ii) the number of shares of Common Stock outstanding (prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and

(B) the denominator of which shall be equal to the sum of (x) the aggregate value of all Cash and any other consideration (as determined in good faith by the Board of Directors) paid or payable for shares purchased in such tender or exchange offer and (y) the product of (i) the Current Market Price on the date of the Expiration Time and (ii) the number of shares of the Common Stock outstanding (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer).

In the event the Company is, or one of the Company's Subsidiaries is, obligated to purchase shares of Common Stock pursuant to any such tender or exchange offer, but the Company is, 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 the Fixed Settlement Rate that would then be in effect if such tender or exchange offer had not been made.

(vii) (1) If any adjustments are made to the Fixed Settlement Rates pursuant to this Section 5.05(a), an adjustment shall also be made to the Reference Price and the Threshold Appreciation Price solely to determine which of the clauses of the definition of Settlement Rate in Section 5.01(a) will be applicable to determine the Settlement Rate with respect to the Purchase Contract Settlement Date or any Fundamental Change Early Settlement Date. Such adjustment shall be made by multiplying the Reference Price by a fraction, the numerator of which is the Maximum Settlement Rate immediately before such adjustment and the denominator of which shall be the Maximum Settlement Rate immediately after such adjustment and by multiplying the Threshold Appreciation Price by a fraction, the numerator of which is the Minimum Settlement Rate immediately before such adjustment and the denominator of which shall be the Minimum Settlement Rate immediately after such adjustment (rounded, in each case, to the nearest $0.0001). In addition, if any adjustment to the Fixed Settlement Rates becomes effective, or any effective date, Expiration Time, Ex-Date or record date for any stock split or reverse stock split, tender or exchange offer, issuance, dividend or distribution (relating to a required Fixed Settlement Rate adjustment) occurs, during the period beginning on, and including, (i) the open of business on the first Trading Day of the Market Value Averaging Period or (ii) in the case of Early Settlement or Fundamental Change Early Settlement, the relevant Early Settlement Date or the date on which the Fundamental Change Early Settlement Right is exercised and, in each case, ending on, and including, the date on which the Company delivers shares of Common Stock under the related Purchase Contract, the Company shall make appropriate adjustments to the Fixed Settlement Rates and/or the number of shares of Common Stock deliverable upon settlement of the Purchase Contract, in each case, consistent with the methodology used to determine the anti-dilution adjustments set forth above in paragraphs (a)(i) to (a)(vi) of this Section 5.05. If any adjustment to the Fixed Settlement Rates becomes effective, or any effective date, Expiration Time, Ex-Date or record date for any stock split or reverse stock split, tender or exchange offer, issuance, dividend or distribution (relating to a required Fixed Settlement Rate adjustment) occurs, during the period used to determine the Stock Price or any other valuation period hereunder, the Company shall make appropriate adjustments to the applicable prices, consistent with the methodology used to determine the anti-dilution adjustments set forth above in paragraphs (a)(i) to (a)(vi) of this Section 5.05. No adjustment to the Fixed Settlement Rates will be made pursuant to this Section 5.05(a) if Holders participate, as a result of holding the Units and without having to settle the Purchase Contracts that form part of the Units, in the transaction that would otherwise give rise to an adjustment as if they held a number of shares of the Common Stock per Unit equal to the Maximum Settlement Rate, at the same time and upon the same terms as the holders of Common Stock participate in the transaction.

(viii) All adjustments to the Fixed Settlement Rate shall be calculated to the nearest 1/10,000th of a share of Common Stock. No adjustment to the Fixed Settlement Rates shall be required unless such adjustment would require an increase or decrease of at least one percent in one or both Fixed Settlement Rates; *provided* that if any adjustment is not required to be made because it would not change one or both of the Fixed Settlement Rates by at least one percent, the adjustment shall be carried forward and taken into account in any subsequent adjustment; *provided further* that notwithstanding whether or not such one percent threshold shall have been met, all such adjustments under this Section 5.05(a) shall be made no later than each day of any Market Value Averaging Period and the time at which the Company is otherwise required to determine the relevant Settlement Rate or amount of Make-Whole Shares (if applicable) in connection with any settlement of the Purchase Contracts pursuant to Section 5.01, Section 5.05(b)(ii) or Section 5.08.

(ix) The Company may increase the Fixed Settlement Rates, in addition to those required by this Section 5.05(a), if the Board of Directors deems it advisable in order to avoid or diminish any income tax to any holders of Common Stock resulting from any dividend or distribution of shares (or rights to acquire shares) or from any event treated as a dividend or distribution for income tax purposes or for any other reasons. The Company may only make such a discretionary adjustment if the Company makes the same proportionate adjustment to each Fixed Settlement Rate. Any such discretionary adjustment must be in effect for at least 20 Business Days, and the Company shall deliver written notice of the amount of such increase and the number of days for which it will be in effect to the Holders and Purchase Contract Agent at least 15 days prior to such adjustment taking effect. If the Company or another applicable withholding agent pays withholding taxes on behalf of a Holder or beneficial owner of a Purchase Contract as a result of an adjustment to the Fixed Settlement Rate, the Company or such other applicable withholding agent may set off such payments against payments on such Purchase Contract, including any Common Stock received upon purchase on the Settlement Date.

(x) To the extent the Company has a stockholder rights plan involving the issuance of share purchase rights or other similar rights (the "**Rights**") to all or substantially all holders of the Common Stock in effect upon settlement of a Purchase Contract, a Holder shall be entitled to receive upon settlement of any Purchase Contract, in addition to the shares of Common Stock issuable upon settlement of such Purchase Contract, the related Rights for the Common Stock under the stockholder rights plan, unless prior to such settlement, such Rights under the stockholder rights plan have separated from the Common Stock, in which case each Fixed Settlement Rate shall be adjusted at the time of separation as if the Company made a distribution to all holders of the Common Stock as provided in Section 5.05(a)(iv), subject to readjustment in the event of the expiration, termination or redemption of the Rights.

(b) Following the effective date of a Reorganization Event, the Settlement Rate shall be determined by reference to the value of an Exchange Property Unit, and the Company shall deliver, upon settlement of any Purchase Contract, a number of Exchange Property Units equal to the number of shares of Common Stock that the Company would otherwise be required to deliver hereunder. An "**Exchange Property Unit**" is the kind and amount of shares of stock, other securities or other property or assets (including Cash or any combination thereof) receivable in such Reorganization Event (without any interest thereon, and without any right to dividends or distributions thereon that have a record date that is prior to the applicable Settlement Date) per share of Common Stock by a holder of Common Stock that is not a Person with which the Company consolidated or into which the Company merged or which merged into the Company or to which such sale or transfer was made, as the case may be (any such Person, a "**Constituent Person**"), or an Affiliate of a Constituent Person, to the extent such Reorganization Event provides for different treatment of Common Stock held by a Constituent Person and/or the Affiliates of a Constituent Person, on the one hand, and non-Affiliates of a Constituent Person, on the other hand. In the event holders of Common Stock (other than any Constituent Person or Affiliate thereof) have the opportunity to elect the form of consideration to be received in such Reorganization Event, the Exchange Property Unit that Holders of the Corporate Units or the Treasury Units would have been entitled to receive upon settlement shall be deemed to be (x) the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make an election or (y) if no holders of the Common Stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of Common Stock in such Reorganization Event.

In the event of such a Reorganization Event, the issuer of the Exchange Property Unit following such Reorganization Event of the Company shall execute and deliver to the Purchase Contract Agent an agreement supplemental hereto providing that the Holder of each Unit that remains Outstanding after the Reorganization Event (if any) shall have the rights provided by this Section 5.05(b). Such supplemental agreement shall provide, to the extent the Exchange Property Unit consists (in whole or in part) of common equity securities, for adjustments to the amount of any such securities constituting all or a portion of an Exchange Property Unit and/or adjustments to the Fixed Settlement Rates, which, for events subsequent to the effective date of such Reorganization Event, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 5.05. The provisions of this Section 5.05(b)(i) shall similarly apply to successive Reorganization Events.

When the Company executes a supplemental agreement pursuant to this Section 5.05(b)(i), the Company shall promptly file with the Purchase Contract Agent (i) an Officer's Certificate briefly stating the reasons therefor, the kind or amount of Cash, securities or property or asset that will comprise an Exchange Property Unit after any such Reorganization Event, any adjustments to be made with respect thereto and that all conditions precedent have been complied with and (ii) an Opinion of Counsel that all conditions precedent have been complied with, and shall promptly deliver or cause to be delivered notice thereof to all Holders. Failure to deliver such notice shall not affect the legality or validity of such supplemental agreement. The Company shall not become a party to any Reorganization Event unless its terms are consistent with this Section 5.05(b)(i). For the avoidance of doubt, in no event shall the Purchase Contract Agent or any other Agent have any obligation to determine whether the terms of any Reorganization Event are consistent with or otherwise comply with this Section 5.05(b)(i).

In connection with any Reorganization Event, the Reference Dividend shall be subject to adjustment as described in clause (A), clause (B) or clause (C) below, as the case may be.

(A) In the case of a Reorganization Event in which the Exchange Property Unit (determined, as appropriate, as set forth above and excluding any dissenters' appraisal rights) is composed entirely of shares of common stock (the "Merger Common Stock"), the Reference Dividend at and after the effective time of such Reorganization Event will be equal to (x) the Reference Dividend immediately prior to the effective time of such Reorganization Event, *divided by* (y) the number of shares of Merger Common Stock that a holder of one share of Common Stock would receive in such Reorganization Event (such quotient rounded to the nearest $0.0001).

(B) In the case of a Reorganization Event in which the Exchange Property Unit (determined, as appropriate, as set forth above and excluding any dissenters' appraisal rights) is composed in part of shares of Merger Common Stock, the Reference Dividend at and after the effective time of such Reorganization Event will be equal to (x) the Reference Dividend immediately prior to the effective time of such Reorganization Event, *multiplied by* (y) the Merger Valuation Percentage for such Reorganization Event (such product rounded to the nearest $0.0001).

(C) For the avoidance of doubt, in the case of a Reorganization Event in which the Exchange Property Unit (determined, as appropriate, as set forth above and excluding any dissenters' appraisal rights) is composed entirely of consideration other than shares of common stock, the Reference Dividend at and after the effective time of such Reorganization Event will be equal to zero.

For purposes of calculating the "value" of an Exchange Property Unit, or any Cash, securities or other property included therein, for purposes of (I) this Section 5.05(b)(i) and (II) the definitions of "Merger Valuation Percentage" and "Fundamental Change," (x) the value of any Cash shall be the face amount thereof, (y) the value of any common stock shall be (A) in the case of clause (I) above, the average of the volume-weighted average prices of such common stock on each Trading Day during the Market Value Averaging Period (subject to Section 5.05(a)(vii)(1)) and (B) in the case of clause (II) above, the Closing Price of such common stock (determined as if references in the definition of "Closing Price" to "Common Stock" referred instead to such common stock) on the relevant effective date (or, if such day is not a Trading Day, the immediately following Trading Day) and (z) the value of any other property, including securities other than any such common stock, included in the Exchange Property Unit, shall be the fair market value of such property over the Market Value Averaging Period, in the case of clause (I) above, or on the applicable effective date (or, if such day is not a Trading Day, the immediately following Trading Day), in the case of clause (II) above (in each case, as determined in good faith by the Board of Directors, whose determination shall be described in a Board Resolution).

(ii) If a Fundamental Change occurs prior to the 30th Scheduled Trading Day preceding the Purchase Contract Settlement Date, then following such Fundamental Change, each Holder of a Purchase Contract shall have the right ("**Fundamental Change Early Settlement Right**") to accelerate and settle ("**Fundamental Change Early Settlement**") such Purchase Contract, upon the conditions set forth below, on the Fundamental Change Early Settlement Date at the Settlement Rate determined as if the Applicable Market Value were determined, for such purpose, based on the Market Value Averaging Period starting on the 22nd Scheduled Trading Day prior to the Fundamental Change Early Settlement Date and ending on, and including, the third Scheduled Trading Day immediately preceding the Fundamental Change Early Settlement Date, plus an additional make-whole amount of shares of Common Stock (the "**Make-Whole Shares**"), subject to adjustment under Section 5.05(a)(vii), and receive payment of Cash in lieu of any fraction of a share, as provided in Section 5.09; *provided* that if 20 Trading Days for the Common Stock have not occurred during such deemed Market Value Averaging Period, all remaining Trading Days will be deemed to occur on the third Scheduled Trading Day immediately prior to the Fundamental Change Early Settlement Date and the VWAP for each of the remaining Trading Days will be the VWAP on such third Scheduled Trading Day or, if such day is not a Trading Day, the Closing Price of the Common Stock as of such day; *provided further* that no Fundamental Change Early Settlement will be permitted pursuant to this Section 5.05(b)(ii) unless, at the time such Fundamental Change Early Settlement is effected, there is an effective Registration Statement with respect to any securities to be issued and delivered in connection with such Fundamental Change Early Settlement, if such a Registration Statement is required (in the view of counsel, which need not be in the form of a written opinion, for the Company) under the Securities Act. If such a Registration Statement is so required, (A) the Company shall, promptly after the date on which the Holder attempts to effect a Fundamental Change Early Settlement, so notify such Holder, and (B) the Company agrees to use its commercially reasonable efforts to (x) have in effect throughout the Fundamental Change Exercise Period a Registration Statement covering the Common Stock and other securities, if any, to be delivered in respect of the Purchase Contracts being settled and (y) provide a Prospectus in connection therewith, in each case, in a form that may be used in connection with such Fundamental Change Early Settlement (it being understood that for so long as there is a material business transaction or development that has not yet been publicly disclosed (but in no event for a period longer than 90 days), the Company will not be required to file such Registration Statement or provide such a Prospectus, and a Fundamental Change Early Settlement Right will not be available, until the Company has publicly disclosed such transaction or development; *provided* that the Company shall use commercially reasonable efforts to make such disclosure as soon as it is commercially reasonable to do so). In the event that a Holder seeks to exercise its Fundamental Change Early Settlement Right and a Registration Statement is required to be effective in connection with the exercise of such right but no such Registration Statement is then effective or a Blackout Period is continuing, the Holder's exercise of such right shall be void unless and until such a Registration Statement is effective and no Blackout Period is continuing. The Fundamental Change Exercise Period shall be extended by the number of days during such period on which no such Registration Statement is effective or a Blackout Period is continuing (*provided* that the Fundamental Change Exercise Period shall not be extended beyond the third Scheduled Trading Day preceding the Purchase Contract Settlement Date) and the Fundamental Change Early Settlement Date shall be postponed to the third Scheduled Trading Day following the end of the Fundamental Change Exercise Period. The Company shall provide written notice to Holders of Units and the Purchase Contract Agent of any such extension and postponement at least 23 Scheduled Trading Days prior to the postponed Fundamental Change Early Settlement Date.

The Company shall provide written notice to Holders of Units and the Purchase Contract Agent of the completion of a Fundamental Change within four Scheduled Trading Days after the Effective Date (as hereinafter defined) of a Fundamental Change, which shall specify (1) an early settlement date in respect of such Fundamental Change (subject to postponement, as set forth above, the "**Fundamental Change Early Settlement Date**"), which shall be at least 26 Scheduled Trading Days after the date of such notice and one Business Day prior to the Purchase Contract Settlement Date, on which date the Company will deliver shares of Common Stock to Holders who exercise the Fundamental Change Early Settlement Right, (2) the date by which Holders must exercise the Fundamental Change Early Settlement Right, which shall be no earlier than the second Scheduled Trading Day before the Fundamental Change Early Settlement Date, (3) the first Scheduled Trading Day of the deemed Market Value Averaging Period, which will be the 22nd Scheduled Trading Day prior to the Fundamental Change Early Settlement Date, (4) the Reference Price, the Threshold Appreciation Price and the Fixed Settlement Rates, (5) the amount and kind (per share of Common Stock) of Cash, securities and other consideration receivable by the Holder upon settlement and (6) the amount of accrued and unpaid Contract Adjustment Payments (including any deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon), if any, that will be paid upon settlement to Holders exercising the Fundamental Change Early Settlement Right.

Corporate Units Holders may only effect Fundamental Change Early Settlement pursuant to this Section 5.05(b)(ii) in integral multiples of 20 Corporate Units and Treasury Units Holders may only effect Fundamental Change Early Settlement pursuant to this Section 5.05(b)(ii) in integral multiples of 20 Treasury Units, as the case may be; *provided* that if Applicable Ownership Interests in the Treasury Portfolio have replaced Applicable Ownership Interests in Notes as a component of the Corporate Units, Corporate Units Holders may only effect Fundamental Change Early Settlement pursuant to this Section 5.05(b)(ii) in multiples of 80,000 Corporate Units.

In order to exercise the Fundamental Change Early Settlement Right with respect to any Purchase Contracts, the Holder of the Certificate evidencing Units shall deliver to the Purchase Contract Agent at the Corporate Trust Office of the Purchase Contract Agent, during the period beginning on, and including, the date the Company delivers notice that a Fundamental Change has occurred and ending at 4:00 p.m., New York City time, on the second Scheduled Trading Day immediately preceding the Fundamental Change Early Settlement Date (such period, subject to extension as set forth above, the "**Fundamental Change Exercise Period**") a notice of such election in the form attached thereto and such Certificate evidencing its Corporate Units or Treasury Units if they are held in certificated form, duly endorsed for transfer to the Company or in blank with the form of Election to Fundamental Change Early Settlement on the reverse thereof duly completed, and payment of the Purchase Price for each Purchase Contract being settled in immediately available funds.

In the event that Units are held by or through DTC or another Depository, the exercise of the right to effect Fundamental Change Early Settlement shall occur in conformity with the Applicable Procedures and standing arrangements between DTC or such Depository and the Purchase Contract Agent.

Upon receipt of any such Certificate and payment of such funds, the Purchase Contract Agent shall pay the Company from such funds the related Purchase Price pursuant to the terms of the related Purchase Contracts, and the Company shall promptly (in any event, on the same day) notify the Purchase Contract Agent in writing of its receipt of such Relevant Purchase Price, and upon receipt of such written confirmation the Purchase Contract Ashall notify the Collateral Agent that all the conditions necessary for a Fundamental Change Early Settlement by a Holder of Units have been satisfied pursuant to which the Purchase Contract Agent has received from such Holder, and paid to the Company, as confirmed in writing by the Company, the related Purchase Price.

Upon receipt by the Collateral Agent of the notice from the Purchase Contract Agent set forth in the preceding paragraph, the Collateral Agent shall release from the Pledge, (1) the Notes underlying the Pledged Applicable Ownership Interests in Notes or the Pledged Applicable Ownership Interests in the Treasury Portfolio, as the case may be, in the case of a Holder of Corporate Units, or (2) the Pledged Treasury Securities, in the case of a Holder of Treasury Units, in each case relating to the Units containing the Purchase Contracts as to which such Holder has elected to effect Fundamental Change Early Settlement, and shall instruct the Securities Intermediary to Transfer all such Pledged Applicable Ownership Interests in the Treasury Portfolio or Notes underlying Pledged Applicable Ownership Interests in Notes or Pledged Treasury Securities, as the case may be, to the Purchase Contract Agent for distribution to such Holder in accordance with the terms provided for herein, in each case free and clear of the Pledge created hereby.

If a Holder exercises the Fundamental Change Early Settlement Right in accordance with the provisions of this Section 5.05(b)(ii), the Company will deliver (or, except for the Prospectus referred to in clause (D) below, which shall in all events be delivered by the Company, will cause the Purchase Contract Agent to deliver) to the Holder on the Fundamental Change Early Settlement Date for each Purchase Contract with respect to which such Holder has elected Fundamental Change Early Settlement:

(A) a number of shares of Common Stock (or Exchange Property Units, if applicable) equal to the Settlement Rate determined pursuant to the first paragraph of this Section 5.05(b)(ii) plus the applicable Make-Whole Shares determined as set forth in Section 5.05(b)(iii);

(B) the amount of any accrued and unpaid Contract Adjustment Payments (including any deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon) to, but excluding, the Fundamental Change Early Settlement Date, unless the date on which the Fundamental Change Early Settlement Right is exercised occurs following any Record Date and prior to the related scheduled Contract Adjustment Payment Date, and the Company is not deferring the related Contract Adjustment Payment, in which case the Company shall instead pay all accrued and unpaid Contract Adjustment Payments to the Holder as of such Record Date; *provided* that if the date on which the Fundamental Change Early Settlement Right is exercised occurs following any Record Date and prior to the related scheduled Contract Adjustment Payment Date, and the Company is deferring the related Contract Adjustment Payment, the Company shall pay such Holder any accrued and unpaid Contract Adjustment Payments (including any accrued and unpaid deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon) to, but excluding, the Fundamental Change Early Settlement Date on the Fundamental Change Early Settlement Date;

(C) the Notes, the Applicable Ownership Interests in the Treasury Portfolio or the Treasury Securities, as the case may be, related to each Unit with respect to which the Holder is effecting a Fundamental Change Early Settlement, free and clear of the Pledge created hereby; and

(D) if so required under the Securities Act, a Prospectus as contemplated by this Section 5.05(b)(ii).

The Corporate Units or the Treasury Units of the Holders who do not elect Fundamental Change Early Settlement in accordance with the foregoing will continue to remain Outstanding and be subject to settlement on the Purchase Contract Settlement Date in accordance with the terms hereof. In the event that Fundamental Change Early Settlement is effected with respect to Purchase Contracts underlying less than all the Units evidenced by a Certificate, upon such Fundamental Change Early Settlement, the Company shall execute and upon receipt of an Issuer Order, the Purchase Contract Agent shall execute on behalf of the Holder as its attorney-in-fact, authenticate and deliver to the Holder thereof, at the expense of the Company, a Certificate evidencing the Units as to which Fundamental Change Early Settlement was not effected.

(iii) The number of Make-Whole Shares per Purchase Contract deliverable upon a Fundamental Change Early Settlement will be calculated by the Company and will be determined 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 in such Fundamental Change. The "Stock Price" in such Fundamental Change will be:

(A) if holders of Common Stock receive only Cash in a Fundamental Change described in clause (ii) of the definition of Fundamental Change, the Cash amount paid per share of the Common Stock; or

(B) otherwise, the average of the Closing Prices of the Common Stock over the 20 Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of such Fundamental Change.

The Stock Prices set forth in the second row of the table (that is, the column headers) shall be adjusted upon the occurrence of those events set forth in Section 5.05(a) requiring anti-dilution adjustments to the Fixed Settlement Rates. Each of the Make-Whole Share amounts in the table will be subject to adjustment in the same manner and at the same time as the Fixed Settlement Rates as set forth under Section 5.05(a). The adjusted Stock Prices will equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the applicable Fixed Settlement Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the same Fixed Settlement Rate as so adjusted.

Stock Price

Effective Date	$10.00	$20.00	$30.00	$40.00	$50.00	$58.57	$63.00	$68.82	$80.00	$100.00	$120.00	$140.00	$160.00	$180.00
November 3, 2026	0.6321	0.3096	0.1990	0.1298	0.0713	0.0000	0.0720	0.1195	0.0918	0.0638	0.0492	0.0400	0.0335	0.0285
November 1, 2027	0.4351	0.2133	0.1382	0.0907	0.0428	0.0000	0.0458	0.0935	0.0673	0.0442	0.0338	0.0276	0.0232	0.0198
November 1, 2028	0.2239	0.1098	0.0717	0.0496	0.0182	0.0000	0.0192	0.0643	0.0379	0.0222	0.0173	0.0142	0.0120	0.0103
November 1, 2029	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact Stock Price and Effective Date applicable to a Fundamental Change may not be set forth on the table, in which case:

(1) if the Stock Price is between two Stock Prices on the table or the Effective Date is between two Effective Dates on the table, the amount of Make-Whole Shares will be determined by straight line interpolation between the Make-Whole Share amounts set forth for the higher and lower Stock Prices and the earlier and later Effective Dates based on a 365-day year, as applicable;

(2) if the Stock Price is in excess of $180.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the second row of the table as set forth above), then the Make-Whole Share amount will be zero; and

(3) if the Stock Price is less than $10.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the second row of the table as set forth above) (the "**Minimum Stock Price**"), then the Make-Whole Share amount will be determined as if the Stock Price equaled the Minimum Stock Price, using straight line interpolation, as set forth in clause (1) above, if the Effective Date is between two Effective Dates on the table.

(c) The Fixed Settlement Rates shall not be adjusted (subject to Section 5.05(a)(ix)):

(1) 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;

(2) upon the issuance of options, restricted stock or other awards in connection with any employment contract, executive compensation plan, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors, consultants or independent contractors or the exercise of such options or other awards;

(3) 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 date the Units were first issued;

(4) upon the repurchase of any shares of Common Stock, including without limitation pursuant to an open-market share repurchase program, a structured derivative transaction or other buy-back transaction, that is not a tender offer or exchange offer of the kind described in Section 5.05(a)(vi);

(5) for a change to the par value, or from par value to no par value of the Common Stock; or

(6) for accumulated and unpaid Contract Adjustment Payments.

(d) Each adjustment to each Fixed Settlement Rate will result in a corresponding adjustment to the number of shares of Common Stock issuable upon Early Settlement.

(e) All calculations and determinations pursuant to this Section 5.05 shall be made by the Company in good faith and the Purchase Contract Agent shall have no responsibility with respect to such calculations and determinations.

Section 5.06 *Notice of Adjustments and Certain Other Events*. (a) Whenever the Fixed Settlement Rates are adjusted as herein provided, the Company shall, as soon as practicable following the occurrence of an event that requires an adjustment pursuant to Section 5.05 (or if the Company is not aware of such occurrence, as soon as practicable after becoming so aware):

(i) compute each adjusted Fixed Settlement Rate in accordance with Section 5.05 and prepare and transmit to the Purchase Contract Agent an Officer's Certificate setting forth each adjusted Fixed Settlement Rate, the method of calculation thereof in reasonable detail, and the facts requiring such adjustment and upon which such adjustment is based; and provide a written notice to the Holders of the Units and the Purchase Contract Agent of the occurrence of such event and a statement in reasonable detail setting forth the method by which the adjustment to each Fixed Settlement Rate was determined and setting forth each adjusted Fixed Settlement Rate.

(b) The Purchase Contract Agent shall not at any time be under any duty or responsibility to determine whether any facts exist which may require any adjustment of each Fixed Settlement Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed in making the same. The Purchase Contract Agent shall be fully authorized and protected in relying on any Officer's Certificate delivered pursuant to Section 5.06(a)(i) and any adjustment contained therein and the Purchase Contract Agent shall not be deemed to have knowledge of any adjustment unless and until it has received such Officer's Certificate. The Purchase Contract Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, which may at the time be issued or delivered with respect to any Purchase Contract; and the Purchase Contract Agent makes no representation with respect thereto. The Purchase Contract Agent shall not be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock pursuant to a Purchase Contract or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article V.

Section 5.07 *Termination Event; Notice*.

(a) The Purchase Contracts and all obligations and rights of the Company and the Holders thereunder, including the Holders' obligation and right to purchase and receive shares of Common Stock and to receive accrued and unpaid Contract Adjustment Payments (including any deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon)), shall immediately and automatically terminate, without the necessity of any notice or action by any Holder, the Purchase Contract Agent or the Company, if, prior to or on the Purchase Contract Settlement Date, a Termination Event shall have occurred. In the event of such a termination of the Purchase Contracts as a result of a Termination Event, Holders of such Purchase Contracts will not have a claim in bankruptcy under the Purchase Contract with respect to the Company's issuance of shares of Common Stock or the right to receive Contract Adjustment Payments.

(b) Upon and after the occurrence of a Termination Event, the Units shall thereafter represent the right to receive the Notes (or security entitlements with respect thereto) underlying the Applicable Ownership Interests in Notes, the Treasury Securities or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, forming part of such Units, and any other Collateral, in each case, in accordance with the provisions of Section 3.15. Upon the occurrence of a Termination Event, (i) the Company shall promptly thereafter give written notice to the Purchase Contract Agent, the Collateral Agent and the Holders, at their addresses as they appear in the Security Register and (ii) the Collateral Agent shall, in accordance with Section 3.15 and the instructions provided for in the aforementioned notice from the Company, release the Notes (or security entitlements with respect thereto) underlying the Pledged Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of Applicable Ownership Interests in the Treasury Portfolio) forming a part of each Corporate Unit or the Treasury Securities forming a part of each Treasury Unit, as the case may be, and any other Collateral from the Pledge.

Section 5.08 *Early Settlement*. Subject to and upon compliance with the provisions of this Section 5.08, at the option of the Holder thereof, Purchase Contracts underlying Units may be settled early ("Early Settlement") at any time prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the Purchase Contract Settlement Date, other than during a Blackout Period in the case of Corporate Units; provided that no Early Settlement will be permitted unless, at the time such Early Settlement is effected, there is an effective Registration Statement with respect to any securities to be issued and delivered in connection with such Early Settlement, if such a Registration Statement is required (in the view of counsel, which need not be in the form of a written opinion, for the Company) under the Securities Act. If such a Registration Statement is so required, (A) the Company shall, promptly after the date on which the Holder attempts to effect an Early Settlement, so notify such Holder, and (B) the Company agrees to use its commercially reasonable efforts to (i) have in effect a Registration Statement covering those shares of Common Stock and other securities, if any, to be delivered in respect of the Purchase Contracts being settled and (ii) provide a Prospectus in connection therewith, in each case, in a form that may be used in connection with such Early Settlement (it being understood that if there is a material business transaction or development that has not yet been publicly disclosed, the Company will not be required to file such Registration Statement or provide such a Prospectus, and the right to effect Early Settlement will not be available, until the Company has publicly disclosed such transaction or development; provided that the Company shall use commercially reasonable efforts to make such disclosure as soon as it is commercially reasonable to do so). In the event that a Holder seeks to exercise its right to effect Early Settlement and a Registration Statement is required to be effective in connection with the exercise of such right but no such Registration Statement is then effective, the Holder's exercise of such right shall be void unless and until such a Registration Statement shall be effective.

(a) In order to exercise the right to effect Early Settlement with respect to any Purchase Contracts, the Holder of the Certificate evidencing Units (in the case of Certificates in definitive certificated form) shall deliver, at any time prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the Purchase Contract Settlement Date, other than during a Blackout Period in the case of Corporate Units, such Certificate to the Purchase Contract Agent at the Corporate Trust Office of the Purchase Contract Agent, duly endorsed for transfer to the Company or in blank with the form of Election to Settle Early in the form attached thereto duly completed and accompanied by payment (payable to the Company in immediately available funds) in an amount (the "**Early Settlement Amount**") equal to:

(i) (A) the Stated Amount, multiplied by (B) the number of Purchase Contracts with respect to which the Holder has elected to effect Early Settlement in accordance with this Section 5.08, plus

(ii) if the Early Settlement Date occurs during the period from the close of business on any Record Date next preceding any Contract Adjustment Payment Date to the opening of business on such Contract Adjustment Payment Date, an amount equal to the Contract Adjustment Payments payable on such Contract Adjustment Payment Date, unless the Company elected to defer Contract Adjustment Payments which would otherwise be payable on such Contract Adjustment Payment Date.

In the case of Book-Entry Interests, each Beneficial Owner electing Early Settlement must deliver the Early Settlement Amount to the Purchase Contract Agent along with the Election to Settle Early form duly completed, make book-entry transfer of such Book-Entry Interests and comply with the Applicable Procedures of the Depository.

If the foregoing requirements are first satisfied with respect to Purchase Contracts underlying any Units prior to 4:00 p.m., New York City time, on a Business Day, such day shall be the "**Early Settlement Date**" with respect to such Units and if such requirements are first satisfied at or after 4:00 p.m., New York City time, on a Business Day or on a day that is not a Business Day, the "**Early Settlement Date**" with respect to such Units shall be the next succeeding Business Day.

Upon the receipt of such Certificate and Early Settlement Amount from the Holder, the Purchase Contract Agent shall pay to the Company such Early Settlement Amount, the receipt of which payment the Company shall promptly (in any event, on the same day) confirm in writing. Upon written confirmation of such payment by the Company to the Purchase Contract Agent, the Purchase Contract Agent shall then notify the Collateral Agent that (A) such Holder has elected to effect an Early Settlement, which notice shall set forth the number of such Purchase Contracts as to which such Holder has elected to effect Early Settlement, and (B) the Purchase Contract Agent has received from such Holder, and paid to the Company as confirmed in writing by the Company, the related Early Settlement Amount.

Upon receipt by the Collateral Agent of the notice from the Purchase Contract Agent set forth in the preceding paragraph, the Collateral Agent shall release from the Pledge, (1) in the case of a Holder of Corporate Units, the Notes underlying the Pledged Applicable Ownership Interests in Notes or the Pledged Applicable Ownership Interests in the Treasury Portfolio, as the case may be, relating to the Purchase Contracts to which Early Settlement is effected, or (2) in the case of a Holder of Treasury Units, Pledged Treasury Securities, in each case relating to the Units containing the Purchase Contracts as to which such Holder has elected to effect Early Settlement, and shall instruct the Securities Intermediary to Transfer all such Pledged Applicable Ownership Interests in the Treasury Portfolio or Notes underlying such Pledged Applicable Ownership Interests in Notes or Pledged Treasury Securities, as the case may be, to the Purchase Contract Agent for distribution to such Holder in accordance with the terms provided for herein, in each case free and clear of the Pledge created hereby.

Holders of Corporate Units and Treasury Units may only effect Early Settlement pursuant to this Section 5.08 in integral multiples of 20 Corporate Units or 20 Treasury Units, as the case may be; *provided* that if Applicable Ownership Interests in the Treasury Portfolio have replaced Applicable Ownership Interests in Notes as a component of the Corporate Units, Corporate Units Holders may only effect Early Settlement pursuant to this Section 5.08 in integral multiples of 80,000 Corporate Units.

(b) Upon Early Settlement of Purchase Contracts by a Holder of the related Units, on the applicable Settlement Date:

(i) such Holder shall be entitled to receive, and the Company will deliver to the Purchase Contract Agent for delivery to such Holder, a number of shares of Common Stock (or in the case of an Early Settlement following a Reorganization Event, a number of Exchange Property Units) equal to the applicable Minimum Settlement Rate as in effect on the Early Settlement Date for each Purchase Contract as to which Early Settlement is effected, subject to adjustment under Section 5.05(a)(vii), together with payment in lieu of any fraction of a share, as provided in Section 5.09;

(ii) such Holder shall be entitled to receive, and the Securities Intermediary will deliver to the Purchase Contract Agent for delivery to such Holder, the Notes, the Applicable Ownership Interests in the Treasury Portfolio or the Treasury Securities, as the case may be, related to the Corporate Units or the Treasury Units free and clear of the Company's security interest pursuant to the terms set forth herein; and

(iii) the Holder will be entitled to receive, and the Company shall be obligated to pay, any accrued and unpaid Contract Adjustment Payments (including any accrued and unpaid deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon) to, but excluding, the Contract Adjustment Payment Date immediately preceding the Early Settlement Date.

Upon any Early Settlement, the Holder's right to receive future Contract Adjustment Payments and any accrued and unpaid Contract Adjustment Payments for the period since the most recent Contract Adjustment Payment Date (including any accrued and unpaid deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon) will terminate.

(c) [Reserved].

(d) Upon Early Settlement of any Purchase Contracts, and subject to receipt of shares of Common Stock or Exchange Property Units from the Company and the Notes, the Applicable Ownership Interests in the Treasury Portfolio or the Treasury Securities, as the case may be, from the Securities Intermediary, as applicable, the Purchase Contract Agent shall on the applicable Settlement Date, in accordance with the instructions provided by the Holder thereof on the applicable form of Election to Settle Early on the reverse of the Certificate evidencing the related Units:

(i) Transfer to the Holder (or its designee) the Notes, the Applicable Ownership Interests in the Treasury Portfolio or the Treasury Securities, as the case may be, related to such Units,

(ii) deliver or cause to be delivered to the Holder (or its designee) a certificate or certificates for the full number of shares of Common Stock or Exchange Property Units (or cause such shares of Common Stock or Exchange Property Units to be delivered by book-entry)_deliverable upon such Early Settlement, together with payment in lieu of any fraction of a share, as provided in Section 5.09, and

(iii) if so required under the Securities Act, and to the extent provided to the Purchase Contract Agent, deliver or cause to be delivered a Prospectus for the shares of Common Stock or other securities deliverable upon such Early Settlement as contemplated by Section 5.08(a);

provided that, for the avoidance of doubt, neither the Purchase Contract Agent nor any other Agent shall have any obligation to determine whether delivering such Prospectus is required under the Securities Act.

(e) In the event that Early Settlement is effected with respect to Purchase Contracts underlying less than all the Units evidenced by a Certificate, upon such Early Settlement the Company shall execute and, upon receipt of an Issuer Order, the Purchase Contract Agent shall execute on behalf of the Holder as it attorney-in-fact, authenticate and deliver to the Holder thereof, at the expense of the Company, a Certificate evidencing the Units as to which Early Settlement was not effected.

Section 5.09 *No Fractional Shares*. No fractional shares or scrip representing fractional shares of Common Stock shall be issued or delivered upon settlement on the Purchase Contract Settlement Date, or upon Early Settlement or Fundamental Change Early Settlement of any Purchase Contracts. If Certificates evidencing more than one Purchase Contract shall be surrendered for settlement at one time by the same Holder, the number of full shares of Common Stock which shall be delivered upon settlement of such Purchase Contracts shall be computed by the Company on the basis of the aggregate number of Purchase Contracts evidenced by the Certificates so surrendered (including any Global Certificate, to the extent permitted by, and practicable under, Applicable Procedures of the Depository). The Purchase Contract Agent, in its capacity as Security Registrar, shall provide the Company with such information as may be reasonably requested by the Company with respect to the Certificates being surrendered. Instead of any fractional share of Common Stock which would otherwise be deliverable upon settlement of any Purchase Contracts on the Purchase Contract Settlement Date, or upon Early Settlement or Fundamental Change Early Settlement, the Company, through the Purchase Contract Agent, shall make a Cash payment to the Holder in respect of such fractional interest in an amount equal to the fraction of a whole share represented by such fractional share multiplied by the Closing Price of the Common Stock on the Trading Day immediately preceding the Purchase Contract Settlement Date (or, in the case of any Early Settlement or Fundamental Change Early Settlement, the Closing Price of the Common Stock on the Trading Day immediately preceding the relevant Settlement Date). The Company shall provide the Purchase Contract Agent from time to time with sufficient funds and instructions to permit the Purchase Contract Agent to make all Cash payments required by this Section 5.09 in a timely manner.

Section 5.10 *Charges and Taxes*. The Company will pay all stock transfer and similar taxes attributable to the initial issuance and delivery of the shares of Common Stock pursuant to the Purchase Contracts; provided that the Company shall not be required to pay any such tax or taxes which may be payable in respect of any exchange of or substitution for a Certificate evidencing Units or any issuance of a share of Common Stock in a name other than that of the registered Holder or Beneficial Owner of a Certificate surrendered in respect of the Units evidenced thereby, other than in the name of the Purchase Contract Agent, as custodian for such Holder or Beneficial Owner, and the Company shall not be required to issue or deliver such share certificates or Certificates unless or until the Person or Persons requesting the transfer or issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax either has been paid or is not payable.

Section 5.11 *Contract Adjustment Payments*. Subject to the provisions of this Section 5.11 and Section 5.12, the Company shall pay, on each Contract Adjustment Payment Date, the Contract Adjustment Payments payable in respect of each Purchase Contract to the Person in whose name the relevant Certificate is registered at the close of business on the Record Date relating to such Contract Adjustment Payment Date. The Contract Adjustment Payments will be payable at the Corporate Trust Office of the Purchase Contract Agent, maintained for that purpose; *provided* that, subject to any applicable laws and regulations, as long as the Units are in global form, the Contract Adjustment Payments shall be payable in accordance with Applicable Procedures of the Depository. If the book-entry system for the Units has been terminated, the Contract Adjustment Payments will be payable by check mailed to the address of the Person entitled thereto at such Person's address as it appears on the Security Register, or, if such Person so requests and designates an account in writing to the Purchase Contract Agent by 5:00 p.m., New York City time, at least five Business Days prior to the Contract Adjustment Payment Date, by wire transfer to such account. If any date on which Contract Adjustment Payments are to be made is not a Business Day, then payment of the Contract Adjustment Payments payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or payment in respect of any such delay). Contract Adjustment Payments payable for any period will be computed on the basis of a 360-day year of twelve 30-day months. The Contract Adjustment Payments will accrue from the date of this Agreement. For the avoidance of doubt, subject to the Company's right to defer Contract Adjustment Payments pursuant to Section 5.12, each Holder on any Record Date shall be entitled to receive the full Contract Adjustment Payment due on the related Contract Adjustment Payment Date regardless of whether such Holder elects to settle the relevant Purchase Contract early (whether pursuant to Section 5.05(b)(ii) or Section 5.08) following such Record Date.

(a) Upon the occurrence of a Termination Event, the Company's obligation to pay future Contract Adjustment Payments (including any accrued and unpaid Contract Adjustment Payments) and any deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) shall cease.

(b) Each Certificate delivered under this Agreement upon registration of transfer of or in exchange for or in lieu of (including as a result of a Collateral Substitution or the re-creation of Corporate Units) any other Certificate shall carry the right to accrued and unpaid Contract Adjustment Payments and deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) that was carried by the Purchase Contracts underlying such other Certificates.

(c) The Company's obligations (collectively, the "**CAP Obligations**") with respect to Contract Adjustment Payments and deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon), if any, shall be subordinated and junior in right of payment to any existing and future senior indebtedness, including the Notes. The CAP Obligations shall rank on a parity with all other indebtedness and obligations of the Company that are so subordinated.

Upon any payment or distribution of assets of the Company to creditors upon any liquidation, dissolution, winding-up, reorganization, assignment for the benefit of creditors, marshalling of assets or liabilities or any bankruptcy, insolvency or similar proceedings of the Company (each such event, if any, referred to as a "**Proceeding**"), the holders of senior indebtedness shall be entitled to receive payment in full of all amounts due on or to become due on or in respect of all senior indebtedness (including any interest accruing thereon after the commencement of any such Proceeding, whether or not allowed as a claim against the Company in such Proceeding), before the Holders of the Units are entitled to receive any payment or distribution (excluding amounts at the time due and owing with respect to the CAP Obligations for the payment of which funds have been deposited in trust for the benefit of the Holders of the Units) on account of the CAP Obligations.

In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company by the Company on account of the CAP Obligations shall be received by the Purchase Contract Agent or any Holder of the Units before all senior indebtedness is paid in full, or provision is made for such payment in money in accordance with its terms, such payment on account of the CAP Obligations shall be held in trust for the benefit of and shall be paid over or delivered to the holders of senior indebtedness or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any such senior indebtedness may have been issued, as their respective interests may appear, as calculated by the Company, for application to the payment of all senior indebtedness remaining unpaid to the extent necessary to pay all senior indebtedness in full in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the holders of such senior indebtedness.

For purposes of the provisions of Section 5.11(d) through (p), "assets of the Company" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Section 5.11 with respect to the CAP Obligations to the payment of all senior indebtedness that may at the time be outstanding; *provided*, however, that (i) the senior indebtedness is assumed by the new corporation, if any, resulting from any such reorganization or readjustment and (ii) the rights of the holders of the senior indebtedness are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided for in Article IX shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of the provisions of Section 5.11(d) through (p) if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article IX. Nothing in this Section 5.11(d) shall apply to claims of, or payments to, the Purchase Contract Agent under or pursuant to Section 7.07.

(d) Any failure by the Company to make any payment on or perform any other obligation in respect of senior indebtedness, other than any indebtedness incurred by the Company or assumed or guaranteed, directly or indirectly, by the Company for money borrowed (or any deferral, renewal, extension or refunding thereof) or any other obligation as to which the provisions of this Section 5.11 shall have been waived by the Company in the instrument or instruments by which the Company incurred, assumed, guaranteed or otherwise created such indebtedness or obligation, shall not be deemed a default under clause (d) of this Section 5.11 if (i) the Company shall be disputing its obligation to make such payment or perform such obligation and (ii) either (A) no final judgment relating to such dispute shall have been issued against the Company which is in full force and effect and is not subject to further review, including a judgment that has become final by reason of the expiration of the time within which a party may seek further appeal or review, or (B) in the event that a judgment that is subject to further review or appeal has been issued, the Company shall in good faith be prosecuting an appeal or other proceeding for review and a stay of execution shall have been obtained pending such appeal or review.

(e) Senior indebtedness shall not be deemed to have been paid in full unless the holders thereof shall have received Cash (or securities or other property satisfactory to such holders) in full payment of such senior indebtedness then outstanding. Upon the payment in full of all senior indebtedness, the rights of the Holders of the Units shall be subrogated to the rights of the holders of senior indebtedness to receive any further payments or distributions of Cash, property or securities of the Company applicable to senior indebtedness until the CAP Obligations shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the senior indebtedness of any cash, property or securities to which the Holders of the Units or the Purchase Contract Agent would be entitled except for the provisions of Section 5.11(d) through 5.11(p), and no payments pursuant to the provisions of Section 5.11(d) through 5.11(p) to the holders of senior indebtedness by Holders of the Units or the Purchase Contract Agent, shall, as among the Company, its creditors other than holders of senior indebtedness and the Holders of the Units, be deemed to be a payment or distribution by the Company to or on account of the senior indebtedness, it being understood that the provisions of Section 5.11(d) through (p) are and are intended solely for the purpose of defining the relative rights of the Holders of the Units, on the one hand, and the holders of the senior indebtedness, on the other hand.

(f) Nothing contained in the provisions of Section 5.11(d) through (p) or elsewhere in this Agreement, the Units or the Purchase Contracts is intended to or shall impair, as among the Company, its creditors other than the holders of senior indebtedness and the Holders of the Units, the obligation of the Company, which is absolute and unconditional, to satisfy the CAP Obligations as and when the same shall become due and payable in accordance with this Agreement, the Units or the Purchase Contracts, or is intended to or shall affect the relative rights against the Company of the Holder and creditors of the Company other than the holders of senior indebtedness, nor shall anything herein or therein prevent the Purchase Contract Agent or any Holder from exercising all remedies otherwise permitted by applicable law upon a failure of the Company to satisfy the CAP Obligations under this Agreement, the Units or the Purchase Contracts, subject to the rights, if any, under the provisions of Section 5.11(d) through (p) of the holders of senior indebtedness in respect of Cash, property or securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in the provisions of Section 5.11(d) through (p), the Purchase Contract Agent, subject to the provisions of Section 7.01, and the Holders shall be entitled to rely upon any order or decree of a court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the senior indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon, and all other facts pertinent thereto or to the provisions of Section 5.11(d) through (p).

The Purchase Contract Agent, subject to the provisions of Article VII, and the Holders of the Units shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself to be a holder of senior indebtedness (or a representative of such holder or a trustee under any indenture under which any instruments evidencing any such senior indebtedness may have been issued) to establish that such notice has been given by a holder of such senior indebtedness or such representative or trustee on behalf of such holder. In the event that the Purchase Contract Agent determines in good faith that further evidence is required with respect to the right of any Person as a holder of senior indebtedness, to participate in any payment or distribution pursuant to the provisions of Section 5.11(d) through 5.11(p), the Purchase Contract Agent may request such Person to furnish evidence to the reasonable satisfaction of the Purchase Contract Agent as to the amount of senior indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the right of such Person under the provisions of Section 5.11(d) through (p), and, if such evidence is not furnished, the Purchase Contract Agent may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment or distribution.

(g) No payment of any CAP Obligations shall be made if (i) any senior indebtedness is not paid when due whether at the stated maturity of any such payment or by call for redemption and any applicable grace period with respect to such default has ended, with such default remaining uncured and such default has not been waived or otherwise ceased to exist; (ii) the maturity of any senior indebtedness has been accelerated because of a default; or (iii) notice has been given of the exercise of an option to require repayment, mandatory payment or prepayment or otherwise.

In the event that, notwithstanding the foregoing, the Company shall make any payment to the Purchase Contract Agent or any Holder of Units prohibited by this Section 5.11(h), then in such event such payment shall be held in trust and paid over and delivered forthwith to the holders of the senior indebtedness or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any such senior indebtedness may have been issued, as their respective interests may appear, as calculated by the Company, for application to the payment of all senior indebtedness remaining unpaid to the extent necessary to pay all senior indebtedness in full in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the holders of such senior indebtedness.

The provisions of this Section 5.11(h) shall not apply to any payment with respect to which Section 5.11(d) would apply.

(h) The Purchase Contract Agent in its individual capacity shall be entitled to all rights set forth in the provisions of Section 5.11(d) through (p) with respect to any senior indebtedness at any time held by it, to the same extent as any other holder of senior indebtedness. Nothing in the provisions of Section 5.11(d) through (p) shall deprive the Purchase Contract Agent of any of its rights as such holder.

Nothing in the provisions of Section 5.11(d) through (p) shall apply to claims of, or payments to, the Purchase Contract Agent under or pursuant to Section 7.07.

(i) [Reserved].

Notwithstanding the provisions of Section 5.11(d) through (p) or any other provision of this Agreement, the Units or the Purchase Contracts, the Purchase Contract Agent shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of moneys to or by the Purchase Contract Agent unless and until a Responsible Officer of the Purchase Contract Agent shall have received written notice thereof at the address specified in Section 1.05 from the Company, from a Holder or from a holder of any senior indebtedness or from any representative or representatives of such holder or any trustee or trustees under any indenture under which any instruments evidencing any such senior indebtedness may have been issued (as established to the satisfaction of the Purchase Contract Agent to be such holder or trustee or representative) and, prior to the receipt of any such written notice, the Purchase Contract Agent shall be entitled, subject to Section 7.01, in all respects to assume that no such facts exist; *provided*, however, that, if prior to the second Business Day preceding the date upon which by the terms hereof any such moneys may become payable for any purpose, the Purchase Contract Agent shall not have received with respect to such moneys the notice provided for in this Section, then, anything herein contained to the contrary notwithstanding, the Purchase Contract Agent shall have full power and authority to receive such moneys and/or apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary, which may be received by it on or after such date; *provided*, however, that no such application shall affect the obligations under the provisions of Section 5.11(d) through (p) of the persons receiving such moneys from the Purchase Contract Agent.

(j) The holders of senior indebtedness may, without affecting in any manner the subordination of the CAP Obligations, at any time or from time to time and in their absolute discretion, agree with the Company to change the manner, place or terms of payment, change or extend the time of payment of, or renew or alter, any senior indebtedness, or amend or supplement any instrument pursuant to which any senior indebtedness is issued, or exercise or refrain from exercising any other of their rights under the senior indebtedness including, without limitation, the waiver of default thereunder, all without notice to or assent from the Holders or the Purchase Contract Agent.

(k) With respect to the holders of senior indebtedness, the Purchase Contract Agent undertakes to perform or to observe only such of its covenants and objectives as are specifically set forth in this Agreement, the Units or the Purchase Contracts, and no implied covenants or obligations with respect to the holders of senior indebtedness shall be read into this Agreement, the Units or the Purchase Contracts against the Purchase Contract Agent. The Purchase Contract Agent shall not be deemed to owe any fiduciary duty to the holders of senior indebtedness and shall not be liable to any such holders if it shall in good faith mistakenly pay over or deliver to the Holders or the Company or any other Person, money or assets to which any holders of senior indebtedness shall be entitled by virtue of the provisions of Section 5.11(d) through (p) or otherwise.

(l) In case at any time any Paying Agent other than the Purchase Contract Agent shall have been appointed by the Company and be then acting hereunder, the term "Purchase Contract Agent" as used in the provisions of Section 5.11(d) through (p) shall in such case (unless the context shall otherwise require) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in the provisions of Section 5.11(d) through (p) in addition to or in place of the Purchase Contract Agent; *provided*, however, that Sections 5.11 (i), (j) and (l) shall not apply to the Company if it acts as Paying Agent.

(m) No right of any present or future holder of senior indebtedness to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Agreement, the Units or the Purchase Contracts, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

(n) Notwithstanding anything contained herein to the contrary, other than as provided in the immediately succeeding sentence, all the provisions of this Agreement, the Units or the Purchase Contracts shall be subject to the provisions of Section 5.11(d) through (p), so far as the same may be applicable thereto.

Notwithstanding anything contained herein to the contrary, the provisions of Section 5.11(d) through (p) shall be of no further effect, and the CAP Obligations shall no longer be subordinated in right of payment to the prior payment of senior indebtedness, if, and to the extent, the Company shall have delivered to the Purchase Contract Agent a written notice to such effect. Any such notice delivered by the Company shall not be deemed to be a supplemental indenture for purposes of Article Nine of the Base Indenture.

(o) The failure of the Company to make a payment with respect to the CAP Obligations by reason of any provision in Section 5.11(d) through (p) shall not be construed as preventing the occurrence of a default under this Agreement, the Units or the Purchase Contracts.

(p) Each Holder of a Unit, by its acceptance thereof, authorizes and expressly directs the Purchase Contract Agent on its behalf to take such action as may be necessary or appropriate to effectuate, as between the Holders of such Units and the holders of such senior indebtedness of the Company, the subordination provided in Section 5.11(d) through (n). The Purchase Contract Agent shall be entitled to all of the rights set forth in Section 5.11(d) through (n) in respect of any such senior indebtedness of the Company at any time held by it in its individual capacity and with respect to any amounts owed to the Purchase Contract Agent pursuant to Section 7.07 to the same extent as any other holder of such senior indebtedness of the Company, and nothing in this Agreement, the Units or the Purchase Contracts shall be construed to deprive the Purchase Contract Agent of any of its rights as such holder.

Section 5.12 *Deferral of Contract Adjustment Payments.*

(a) The Company has the right at any time, and from time to time, to defer payment of all or part of the Contract Adjustment Payments in respect of each Purchase Contract by extending the period for payment of Contract Adjustment Payments to any subsequent Contract Adjustment Payment Date (an "**Extension Period**"), but not beyond the Purchase Contract Settlement Date (or, with respect to Purchase Contracts for (i) which an effective Fundamental Change Early Settlement has occurred, the Fundamental Change Early Settlement Date or (ii) which an effective Early Settlement has occurred, the Contract Adjustment Payment Date immediately preceding the Early Settlement Date). Prior to the expiration of any Extension Period, the Company may further extend such Extension Period to any subsequent Contract Adjustment Payment Date, but not beyond the Purchase Contract Settlement Date (or any applicable Fundamental Change Early Settlement Date or Contract Adjustment Payment Date immediately preceding the Early Settlement Date, as the case may be).

If the Company so elects to defer Contract Adjustment Payments, the Company shall pay additional Contract Adjustment Payments on such deferred installments of Contract Adjustment Payments at a rate equal to 7.750% per annum, compounded on each Contract Adjustment Payment Date to, but excluding, the Contract Adjustment Payment Date on which such deferred Contract Adjustment Payments are paid (the accrued additional Contract Adjustment Payments thereon, being referred to herein as the "**Compounded Contract Adjustment Payments**"). The Company may pay any such deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) on any scheduled Contract Adjustment Payment Date to the Holder on the related Record Date, subject to sub-section (c) below.

(b) The Company shall give written notice to the Purchase Contract Agent (and the Purchase Contract Agent shall promptly thereafter give notice thereof to Holders of Purchase Contracts) of its election to extend any period for the payment of Contract Adjustment Payments, the expected length of any such Extension Period and any extension of any Extension Period, at least one Business Day before the earlier of (i) the Record Date for the Payment Date on which Contract Adjustment Payments would have been payable except for the election to begin or extend the Extension Period or (ii) the date the Purchase Contract Agent is required to give notice to any securities exchange or to Holders of Purchase Contracts of such Record Date or such Payment Date.

(c) The Company shall give written notice to the Purchase Contract Agent (and the Purchase Contract Agent shall promptly thereafter give notice thereof to Holders of Purchase Contracts) of the end of an Extension Period (other than on the Purchase Contract Settlement Date) or its election to pay any portion of the deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) on a Payment Date prior to the end of an Extension Period, at least one Business Day before the earlier of (i) the Record Date for the Payment Date on which such Extension Period shall end or such payment of deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) shall be made or (ii) the date the Purchase Contract Agent is required to give notice to any securities exchange or to Holders of Purchase Contracts of such Record Date or such Payment Date.

(d) In the event the Company exercises its option to defer the payment of Contract Adjustment Payments, then, until all deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) have been paid, the Company shall not (1) declare or pay any dividends on, or make any distributions on, or redeem, purchase or acquire, or make a liquidation payment with respect to any shares of its capital stock, (2) make any payment of principal of, or interest or premium, if any, on, or repay, repurchase or redeem any of the Company's debt securities that rank on parity with, or junior to, the CAP Obligations, or (3) make any guarantee payments under any guarantee by the Company of securities of any of its Subsidiaries if the Company's guarantee ranks on parity with, or junior to, the CAP Obligations; *provided* that the foregoing does not apply to:

(i) purchases, redemptions or other acquisitions of the Company's capital stock in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors, agents, independent contractors or consultants or a stock purchase or dividend reinvestment plan, or the satisfaction of the Company's obligations pursuant to any contract or security outstanding on the date that the Contract Adjustment Payment is deferred requiring the Company to purchase, redeem or acquire its capital stock;

(ii) any payment, repayment, redemption, purchase, acquisition or declaration of dividends described in clause (1) above as a result of a reclassification of the Company's capital stock, or the exchange or conversion of all or a portion of one class or series of the Company's capital stock, for another class or series of the Company's capital stock;

(iii) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of the Company's capital stock or the security being converted or exchanged, or in connection with the settlement of stock purchase contracts outstanding on the date that the Contract Adjustment Payment is deferred;

(iv) dividends or distributions paid or made in the Company's capital stock (or rights to acquire the Company's capital stock), or repurchases, redemptions or acquisitions of the Company's capital stock in connection with the issuance or exchange of the Company's capital stock (or of securities convertible into or exchangeable for shares of the Company's capital stock) and distributions in connection with the settlement of stock purchase contracts outstanding on the date that the Contract Adjustment Payment is deferred;

(v) redemptions, exchanges or repurchases of, or with respect to, any rights outstanding under a stockholder rights plan outstanding on the date that the Contract Adjustment Payment is deferred or the declaration or payment thereunder of a dividend or distribution of or with respect to rights in the future;

(vi) payments on any trust preferred securities, subordinated notes or junior subordinated notes, or any guarantees of any of the foregoing, in each case, that rank equally in right of payment to the CAP Obligations, so long as the amount of payments made on account of such securities or guarantees and the Purchase Contracts is paid on all such securities and guarantees and the Purchase Contracts then outstanding on a *pro rata* basis in proportion to the full payment to which each series of such securities, guarantees or Purchase Contracts is then entitled if paid in full; *provided* that, for the avoidance of doubt, the Company will not be permitted under this Agreement to make Contract Adjustment Payments in part; or

(vii) any payment of deferred interest or principal on, or repayment, redemption or repurchase of, parity or junior securities that, if not made, would cause the Company to breach the terms of the instrument governing such parity or junior securities.

ARTICLE VI
RIGHTS AND REMEDIES OF HOLDERS

Section 6.01 *Unconditional Right of Holders to Receive Contract Adjustment Payments and to Purchase Shares of Common Stock*. Each Holder of a Unit shall have the right, which is absolute and unconditional, (i) except upon and following a Termination Event and subject to Article V, to receive each Contract Adjustment Payment and deferred Contract Adjustment Payment with respect to the Purchase Contract comprising part of such Unit on the respective Contract Adjustment Payment Date for such Unit and (ii) except upon and following a Termination Event, to purchase shares of Common Stock pursuant to the Purchase Contract comprising part of such Unit and, in each such case, to institute suit for the enforcement of any such right to receive Contract Adjustment Payments and the right to purchase shares of Common Stock (including, without limitation, by effecting an Early Settlement or a Fundamental Change Early Settlement in accordance with the terms hereof), and such right shall not be impaired without the consent of such Holder.

Section 6.02 *Restoration of Rights and Remedies*. If any Holder 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, then and in every such case, subject to any determination in such proceeding, the Company, the Purchase Contract Agent, the Collateral Agent, the Securities Intermediary, the Custodial Agent and such Holder 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 6.03 *Rights and Remedies Cumulative*. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Certificates in the last paragraph of Section 3.10, no right or remedy herein conferred upon or reserved to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.04 *Delay or Omission Not Waiver*. No delay or omission of any Holder to exercise any right upon a default or remedy upon a default shall impair any such right or remedy or constitute a waiver of any such right. Every right and remedy given by this Article VI or by law to the Holders may be exercised from time to time, and as often as may be deemed expedient, by such Holders.

Section 6.05 *Undertaking for Costs*. All parties to this Agreement agree, and each Holder of a Unit, by its acceptance of such Unit shall be deemed to have agreed, that any court of competent jurisdiction 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 expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided that the provisions of this Section shall not be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit and provided further that the provisions of this Section shall not apply to any suit instituted by the Purchase Contract Agent, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% of the Outstanding Units, or to any suit instituted by any Holder for the enforcement of any interest on any Notes owed pursuant to such Holder's Applicable Ownership Interests in Notes or Contract Adjustment Payments on or after the respective Payment Date therefor in respect of any Unit held by such Holder, or for enforcement of the right to purchase shares of Common Stock under the Purchase Contract constituting part of any Unit held by such Holder (including, without limitation, by effecting an Early Settlement or a Fundamental Change Early Settlement in accordance with the terms hereof).

Section 6.06 *Waiver of Stay or Extension 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 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, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VII
THE PURCHASE CONTRACT AGENT

Section 7.01 *Certain Duties and Responsibilities*.

(a) The Purchase Contract Agent:

(i) undertakes to perform, with respect to the Units, such duties and only such duties as are specifically set forth in this Agreement and the Remarketing Agreement to be performed by the Purchase Contract Agent and no implied covenants or obligations shall be read into this Agreement or the Remarketing Agreement against the Purchase Contract Agent; and

(ii) may conclusively rely, in the absence of bad faith, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Purchase Contract Agent and conforming to the requirements of this Agreement or the Remarketing Agreement, as applicable, but in the case of any certificates or opinions which by any provision hereof are specifically required to be furnished to the Purchase Contract Agent, the Purchase Contract Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement or the Remarketing Agreement, as applicable (but need not confirm or investigate the accuracy of the mathematical calculations or other facts, statements, opinions or conclusions stated therein).

(b) No provision of this Agreement or the Remarketing 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) this Section 7.01(b) shall not be construed to limit the effect of Section 7.01(a) and Section 7.01(c); and

(ii) the Purchase Contract Agent shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be conclusively determined by a final, non-appealable judgment of a court of competent jurisdiction that the Purchase Contract Agent was grossly negligent in ascertaining the pertinent facts.

(c) No provision of this Agreement or the Remarketing Agreement, or any other document or instrument referred to or provided for herein or in connection herewith, shall require the Purchase Contract Agent to expend or risk its own funds or otherwise incur any liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity and/or security against such risk or liability is not assured to it.

(d) Whether or not therein expressly so provided, every provision of this Agreement and the Remarketing Agreement, or any other document or instrument referred to or provided for herein or in connection herewith, relating to the conduct or affecting the liability of or affording protection to the Purchase Contract Agent shall be subject to the provisions of this Section.

(e) The Purchase Contract Agent is fully authorized to execute and deliver the Remarketing Agreement in its capacity as Purchase Contract Agent. The rights, privileges, protections, immunities and benefits afforded to the Purchase Contract Agent and each Indemnitee under this Agreement, including, without limitation, its and their rights to be compensated, reimbursed and indemnified, shall also extend to and cover the Purchase Contract Agent and each Indemnitee with respect to the role of the Purchase Contract Agent as Purchase Contract Agent under, including action taken, omitted to be taken or suffered by the Purchase Contract Agent pursuant to, the Remarketing Agreement, or any other document or instrument referred to or provided for herein or in connection herewith.

(f) On or prior to the date that is 20 days prior to the first day of the Final Remarketing Period or, if the Company shall have elected to conduct an Optional Remarketing, the date that is 5 Business Days prior to the first day of the applicable Optional Remarketing Period, at the Company's request given in an Officer's Certificate at least three Business Days prior to such 20th day or 5th Business Day, as applicable, the Purchase Contract Agent shall deliver to the Company and the Remarketing Agent an executed counterpart of the Remarketing Agreement, signed by an authorized signatory of the Purchase Contract Agent.

Section 7.02 *Notice of Default*. Within 30 days after the occurrence of any default by the Company hereunder of which a Responsible Officer of the Purchase Contract Agent has received a written notice at its Corporate Trust Office specifying this Agreement and the Units, the Purchase Contract Agent shall transmit or deliver by mail to the Company and the Holders, as their names and addresses appear in the Security Register, notice of such default hereunder, unless the Purchase Contract Agent has received a written notice at its Corporate Trust Office specifying this Agreement and the Units that such default shall have been cured or waived. The term "default" for purposes of this Section 7.02 shall mean the failure by the Company to make any payment with respect to the Certificates when the same shall become due and payable, or any default by the Company in the performance of any of its obligations hereunder, including, without limitation, its covenants set forth in Article X.

Section 7.03 *Certain Rights of Purchase Contract Agent*. Subject to the provisions of Section 7.01:

(a) the Purchase Contract Agent 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, bond, debenture, note, other evidence of indebtedness or other paper or document (whether in its original or electronic form) reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate, Issuer Order or Issuer Request, and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a Board Resolution;

(c) any request, instruction or direction of a Beneficial Owner to the Purchase Contract Agent shall be sufficiently evidenced by a written request, instruction or order signed in the name of such Beneficial Owner by an authorized representative of such Beneficial Owner and certifying to the Purchase Contract Agent that such Person is a Beneficial Owner under the terms of this Agreement; the Purchase Contract Agent shall have the right to require that any directions, instructions or notices provided to it be signed by an authorized representative of such Beneficial Owner, be provided on corporate letterhead or contain a medallion signature guarantee, or contain such other evidence as may be reasonably requested by it, to establish the identity and/or signatures thereon; in acting hereunder, in the absence of gross negligence or willful misconduct by the Purchase Contract Agent, the Purchase Contract Agent shall be fully authorized and protected in relying upon any such request, instruction, direction and certification received by a Beneficial Owner hereunder;

(d) whenever in the administration of this Agreement or the Remarketing Agreement, or any other document or instrument referred to or provided for herein or in connection herewith, the Purchase Contract Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting to take any action hereunder or thereunder, the Purchase Contract Agent (unless other evidence be herein or therein specifically prescribed) may conclusively rely upon an Officer's Certificate of the Company or an Opinion of Counsel;

(e) the Purchase Contract Agent may consult with counsel of its selection and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(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, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, or inquire as to the performance by the Company of any of its covenants in this Agreement, but the Purchase Contract Agent, in its discretion, may make reasonable further inquiry or investigation into such facts or matters related to the execution, delivery and performance of the Purchase Contracts as it may see fit, and, if the Purchase Contract Agent shall determine to make such further inquiry or investigation, it shall be given a reasonable opportunity to examine the relevant books, records and premises of the Company, personally or by agent or attorney, at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(g) the Purchase Contract Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, or an Affiliate of the Purchase Contract Agent and the Purchase Contract Agent shall not be responsible for any misconduct or negligence on the part of any agent, attorney, or Affiliate appointed with due care by it hereunder;

(h) 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 or direction of any of the Holders pursuant to this Agreement, unless such Holders shall have offered to the Purchase Contract Agent security and/or indemnity satisfactory to the Purchase Contract Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(i) the Purchase Contract Agent shall not be liable for any action taken, suffered, or omitted to be taken by it in the absence of gross negligence or willful misconduct by it, as determined by a final, non-appealable judgment of a court of competent jurisdiction, and believed by it to be authorized and within the discretion or rights or powers conferred upon it by this Agreement;

(j) the Purchase Contract Agent shall not be deemed to have notice of any adjustment to the Fixed Settlement Rate, the occurrence of a Termination Event or any default hereunder unless specific written notice of any such adjustment, Termination Event, or occurrence or event which is in fact a default is received by a Responsible Officer of the Purchase Contract Agent at the Corporate Trust Office of the Purchase Contract Agent, and such notice references the Units, the Company and this Agreement;

(k) the Purchase Contract Agent may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Agreement along with specimen signatures, 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;

(l) the rights, privileges, protections, immunities and benefits given to the Purchase Contract Agent, including, without limitation, its right to be compensated, reimbursed and indemnified, are extended to and shall be enforceable by, the Purchase Contract Agent in each of its capacities hereunder (including, for the avoidance of doubt, as Collateral Agent, Securities Intermediary and Custodial Agent) and each agent of, custodian of, and other Person employed by (in each case, as permitted under this Agreement), the Purchase Contract Agent or any other Agent to act hereunder and shall survive the resignation or removal of the Purchase Contract Agent or such Agent and the termination of this Agreement;

(m) the Purchase Contract Agent shall not be required to initiate or conduct any litigation or collection proceedings hereunder and shall have no responsibilities with respect to any default hereunder, in each case, except as expressly set forth herein;

(n) the permissive right of the Purchase Contract Agent to take or refrain from taking action hereunder shall not be construed as a duty;

(o) the duties of the Purchase Contract Agent hereunder and under the Remarketing Agreement and under any other document or instrument referred to or provided for herein or in connection herewith are solely ministerial and administrative in nature;

(p) for the avoidance of doubt, the Purchase Contract Agent shall not be deemed to have any obligation with respect to matters addressed in the Indenture or the Supplemental Indenture that are not expressly set forth in this Agreement;

(q) the Purchase Contract Agent shall not be required to give any bond or surety in respect of the performance of its powers or duties hereunder;

(r) the Purchase Contract Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, is contrary to law or to the terms of this Agreement, or which would subject it or any of its officers, employees or directors to personal liability; and

(s) as to any discretionary action or matters not expressly provided for by this Agreement, the Purchase Contract Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions given by the Company or the Holders, as the case may be; provided, however, it is understood that in all cases the Purchase Contract Agent shall be fully justified in failing or refusing to take any such action under this Agreement if it shall not have received such direction from the Company or the Holders (acting in accordance with this Agreement); this provision is intended solely for the benefit of the Purchase Contract Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

Section 7.04 *Not Responsible for Recitals or Issuance of Units*. The recitals contained herein, in the Remarketing Agreement, in any other document or instrument referred to or provided for herein or in connection herewith and in the Certificates shall be taken as the statements of the Company, and the Purchase Contract Agent assumes no responsibility for their accuracy or validity. The Purchase Contract Agent makes no representations as to the validity or sufficiency of either this Agreement or of the Units or the Pledge or the Collateral or the Remarketing Agreement or of any other document or instrument referred to or provided for herein or in connection herewith and shall have no responsibility for perfecting or maintaining the perfection of any security interest in the Collateral nor for making any calculations hereunder. The Purchase Contract Agent shall not be accountable for the use or application by the Company of the proceeds in respect of the Purchase Contracts or for funds received and disbursed in accordance with this Agreement. The Purchase Contract Agent shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum, prospectus, prospectus supplement or other disclosure material prepared or distributed with respect to the issuance of the Units.

Section 7.05 *May Hold Units*. Any Securities Registrar or any other agent of the Company, or the Purchase Contract Agent and its Affiliates, in their individual or any other capacity, may become the owner or pledgee of Units and may otherwise deal with the Company, the Collateral Agent or any other Person with the same rights it would have if it were not Securities Registrar or such other agent, or the Purchase Contract Agent. The Company may become the owner or pledgee of Units.

Section 7.06 *Money and Property Held in Custody*. Money or other property held by the Purchase Contract Agent in custody hereunder need not be segregated from the Purchase Contract Agent's other funds except to the extent required by law or provided herein; provided, however, that when the Purchase Contract Agent holds Cash as a component of the Treasury Portfolio or a Treasury Unit, such Cash shall be held in a segregated account hereunder. The Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representations or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's lien thereon or any certificate prepared by the Company in connection therewith, nor shall the Collateral Agent be responsible or liable to the Holders or any other Person for any failure to monitor or maintain any portion of the Collateral. Beyond the exercise of reasonable care in the custody thereof and except as otherwise specifically set forth herein, no Agent shall have any duty as to any of the Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and no Agent (A) shall be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by such Agent in good faith and with reasonable care, and (B) shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which such Agent accords its own property.

The Purchase Contract Agent shall be under no obligation to invest or pay interest on any money received by it hereunder except as agreed in writing with the Company. If no standing instruction exists at the time any funds are received by the Purchase Contract Agent, the Securities Intermediary or the Collateral Agent, such funds shall remain uninvested without liability for interest or other compensation thereon.

Section 7.07 *Compensation and Reimbursement*.

The Company agrees:

(a) to pay to the Purchase Contract Agent compensation for all services rendered by it hereunder and under the Remarketing Agreement as the Company and the Purchase Contract Agent shall from time to time agree in writing;

(b) to reimburse the Purchase Contract Agent upon its request for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by the Purchase Contract Agent in accordance with any provision of this Agreement and the Remarketing Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be caused by its gross negligence or willful misconduct (as determined by a final, non-appealable judgment of a court of competent jurisdiction); and

(c) to indemnify the Purchase Contract Agent and any predecessor Purchase Contract Agent and each of their respective officers, partners, members, directors, trustees, advisors, employees, agents, sub-agents and affiliates (collectively, with the Purchase Contract Agent, the "**Indemnitees**") for, and to hold each Indemnitee harmless against, any liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including reasonable fees and expenses of outside counsel) incurred without gross negligence or willful misconduct (as determined by a final, non-appealable judgment of a court of competent jurisdiction) on its part, arising out of or in connection with the acceptance, performance or administration of its duties hereunder and under the Remarketing Agreement, including the Indemnitees' reasonable out-of-pocket costs and expenses of enforcing this Agreement or the Remarketing Agreement and of defending themselves against any claim or liability in connection with the exercise or performance of any of the Purchase Contract Agent's powers or duties hereunder or thereunder (whether asserted by a Holder, the Company or otherwise) or of enforcing the provisions of this Section. The Purchase Contract Agent shall promptly notify the Company of any third-party claim of which a Responsible Officer has received written notice and which may give rise to the indemnity hereunder and give the Company the opportunity to control the defense of such claim with counsel reasonably satisfactory to the applicable Indemnitee, and the Purchase Contract Agent shall provide reasonable cooperation at the Company's expense in the defense. Each Indemnitee may have separate counsel, and the reasonable fees and expenses of such counsel shall be indemnifiable expenses under and subject to the provisions of this Section. Failure by the Purchase Contract Agent to so notify the Company shall not relieve the Company of its obligations hereunder. Any settlement which affects the Purchase Contract Agent may not be entered into without the written consent of the Purchase Contract Agent, unless the Purchase Contract Agent is given a full and unconditional release from liability with respect to the claims covered thereby and such settlement does not include a statement or admission of fault, culpability or failure to act by or on behalf of the Purchase Contract Agent.

The provisions of this Section shall survive the resignation and removal of the Purchase Contract Agent, the satisfaction or discharge of the Units and the Purchase Contracts and the termination of this Agreement.

When the Purchase Contract Agent incurs expenses or renders services in connection with an "Event of Default" specified in Section 501(5) or Section 501(6) of the Base Indenture or any event specified in the second and third paragraphs of Section 5.11(d), 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. "Purchase Contract Agent" for the purposes of this Section 7.07 shall include any predecessor Purchase Contract Agent and the Purchase Contract Agent in each of its capacities hereunder and each agent, custodian and other person employed to act hereunder; *provided*, however, that the gross negligence or willful misconduct of any Purchase Contract Agent hereunder shall not affect the rights of any other Purchase Contract Agent hereunder.

Section 7.08 *Corporate Purchase Contract Agent Required; Eligibility*. There shall at all times be a Purchase Contract Agent hereunder which shall be a Person organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to exercise corporate trust powers and having (or being a member of a bank holding company having) a combined capital and surplus of at least $50,000,000, subject to supervision or examination by federal, state or District of Columbia authority and having or having an agent having a corporate trust office in the continental United States, if there be such a Person in the continental United States, qualified and eligible under this Article and willing to act on reasonable terms. If such Person publishes or files reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published or filed. If 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 hereinafter specified in this Article.

Section 7.09 *Resignation and Removal; Appointment of Successor*. 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 7.10.

(a) The Purchase Contract Agent may resign at any time by giving written notice thereof to the Company 30 days prior to the effective date of such resignation. If the instrument of acceptance by a successor Purchase Contract Agent required by Section 7.10 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.

(b) The Purchase Contract Agent may be removed at any time by Act of the Holders of a majority in number of the Outstanding Units delivered to the Purchase Contract Agent and the Company. If the instrument of acceptance by a successor Purchase Contract Agent required by Section 7.10 shall not have been delivered to the Purchase Contract Agent within 30 days after such Act, the Purchase Contract Agent being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(c) If at any time:

(i) the Purchase Contract Agent fails to comply with Section 310(b) of the TIA, as if the Purchase Contract Agent were an indenture trustee under an indenture qualified under the TIA, and shall fail to resign after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Unit for at least six months;

(ii) the Purchase Contract Agent shall cease to be eligible under Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder; or

(iii) the Purchase Contract Agent shall become incapable of acting or shall be adjudged a 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, (i) the Company by a Board Resolution may remove the Purchase Contract Agent or (ii) any Holder who has been a bona fide Holder of a Unit 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.

(d) If the Purchase Contract Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Purchase Contract Agent for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Purchase Contract Agent and shall comply with the applicable requirements of Section 7.10. If no successor Purchase Contract Agent shall have been so appointed by the Company and accepted appointment in the manner required by Section 7.10, any Holder who has been a bona fide Holder of a Unit for at least six months, on behalf of itself and all others similarly situated, or the Purchase Contract Agent may petition any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(e) 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 in the manner provided in Section 1.06. Each notice shall include the name of the successor Purchase Contract Agent and the address of its Corporate Trust Office.

Section 7.10 *Acceptance of Appointment by Successor*. 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; but, on the request of the Company or the successor Purchase Contract Agent, such retiring Purchase Contract Agent shall, upon payment of amounts owed to it pursuant to Section 7.07, 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 duly assign, transfer and deliver to such successor Purchase Contract Agent all property and money held by such retiring Purchase Contract Agent hereunder.

(a) 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 clause (a) of this Section 7.10.

(b) 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 VII.

Section 7.11 *Merger, Conversion, Consolidation or Succession to Business*. Any Person into which the Purchase Contract Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Purchase Contract Agent shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Purchase Contract Agent (including the administration of this Agreement), shall be the successor of the Purchase Contract Agent hereunder; provided that such Person shall be otherwise qualified and eligible under this Article VII, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Certificates shall have been authenticated and executed on behalf of the Holders, but not delivered, by the Purchase Contract Agent then in office, any successor by merger, conversion or consolidation to such Purchase Contract Agent may adopt such authentication and execution and deliver the Certificates so authenticated and executed with the same effect as if such successor Purchase Contract Agent had itself authenticated and executed such Units.

Section 7.12 *Preservation of Information*. The Purchase Contract Agent shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders received by the Purchase Contract Agent in its capacity as Securities Registrar.

Section 7.13 *No Obligations of Purchase Contract Agent*. Except to the extent otherwise expressly provided in this Agreement, the Purchase Contract Agent assumes no obligations and shall not be subject to any liability under this Agreement, the Remarketing Agreement or any Purchase Contract in respect of the obligations of the Holder of any Unit thereunder. The Company agrees, and each Holder of a Certificate, by its acceptance thereof, shall be deemed to have agreed, that the Purchase Contract Agent's execution of the Certificates on behalf of the Holders shall be solely as agent and attorney-in-fact for the Holders, and that the Purchase Contract Agent shall have no obligation to perform such Purchase Contracts on behalf of the Holders, except to the extent expressly provided in Article V. Anything contained in this Agreement to the contrary notwithstanding, in no event shall the Purchase Contract Agent or its officers, directors, employees or agents be liable under this Agreement or the Remarketing Agreement for (i) indirect, special, punitive, or consequential loss or damage of any kind whatsoever, including lost profits, whether or not the likelihood of such loss or damage was known to the Purchase Contract Agent and regardless of the form of action or (ii) any failure or delay in the performance of its obligations under this Agreement because of circumstances beyond its control, including, without limitation, acts of God; earthquake; fires; floods; wars; civil or military disturbances; terrorist acts; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities; labor disputes; acts of civil or military authority or governmental actions; or other unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility, in each case, which delay, restrict or prohibit the providing of services contemplated by this Agreement; it being understood that the Purchase Contract Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under such circumstances.

Section 7.14 *Acknowledgement of Appointment*. The Company hereby acknowledges the appointment of U.S. Bank Trust Company, National Association ("**U.S. Bank**") to act as Purchase Contract Agent on behalf of the Holders hereunder and under the Remarketing Agreement or under any other document or instrument referred to or provided for herein or in connection herewith, as applicable, and as their attorney-in-fact hereunder and under the Remarketing Agreement or under any other document or instrument referred to or provided for herein or in connection herewith, as applicable. The Company accepts the authorizations, appointments, acknowledgments and other actions taken by the Purchase Contract Agent in accordance with this Agreement, the Remarketing Agreement or any other document or instrument referred to or provided for herein or in connection herewith.

ARTICLE VIII
SUPPLEMENTAL AGREEMENTS

Section 8.01 *Supplemental Agreements without Consent of Holders*. Without the consent of any Holders, the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary, at any time and from time to time, may enter into one or more agreements supplemental hereto, in form satisfactory to the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary, to:

(a) evidence the succession of another Person to the Company's obligations in accordance with Article IX;

(b) add to the covenants of the Company for the benefit of the Holders, or surrender any right or power herein conferred upon the Company;

(c) evidence and provide for the acceptance of appointment hereunder by a successor Purchase Contract Agent, Collateral Agent, Securities Intermediary or Custodial Agent in accordance with Article VII or XV, as the case may be;

(d) make provision with respect to the rights of Holders pursuant to the requirements of Section 5.05(b)(i);

(e) cure any ambiguity or to correct or supplement any provisions herein that may be inconsistent with any other provision herein; or

(f) make such other provisions in regard to matters or questions arising under this Agreement that do not adversely affect the interests of any Holders; *provided*, that any amendment made to conform the provisions of this Agreement to the description of this Agreement, the Units and the Purchase Contracts contained in the preliminary prospectus supplement dated October 29, 2026, relating to the Units (including, without limitation, under the sections entitled "Description of the Equity Units", "Description of the Purchase Contracts", "Certain Provisions of the Purchase Contract and Pledge Agreement" and "Description of the Remarketable Senior Notes"), as supplemented and/or amended by the Term Sheet based upon an Officer's Certificate delivered to the Purchase Contract Agent, will not be deemed to adversely affect the interests of the Holders.

Section 8.02 *Supplemental Agreements with Consent of Holders*. With the consent of the Holders of not less than a majority of the Outstanding Units, with Holders of Corporate Units and Treasury Units voting together as a single class, including without limitation the consent of the Holders obtained in connection with a tender or an exchange offer, by Act of said Holders delivered to the Company and the Purchase Contract Agent, the Company, the Purchase Contract Agent, the Collateral Agent, the Securities Intermediary and the Custodial Agent may enter into an agreement or 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 Units; provided, however, that no such supplemental agreement shall, without the consent of the Holder of each Outstanding Purchase Contract affected thereby:

(a) subject to the Company's right to defer Contract Adjustment Payments, change any Payment Date;

(b) impair the Holders' right to institute suit for the enforcement of any Purchase Contract or payment of any Contract Adjustment Payments or deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon);

(c) except as required pursuant to Section 5.05(a), reduce the number of shares of Common Stock purchasable pursuant to any Purchase Contract, increase the Purchase Price of the shares of Common Stock upon settlement of any Purchase Contract, change the Purchase Contract Settlement Date or change the right to effect an Early Settlement or a Fundamental Change Early Settlement in a manner adverse to the right of the Holder or otherwise adversely affect the Holder's rights under any Purchase Contract, this Agreement or any Remarketing Agreement in any respect;

(d) increase the amount or change the type of Collateral required to be Pledged to secure a Holder's Obligations;

(e) impair the right of the Holder of any Purchase Contract to receive distributions on the Collateral or otherwise adversely affect the Holder's rights in or to such Collateral;

(f) reduce any Contract Adjustment Payments or any deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) or change any place where, or the coin or currency in which, any Contract Adjustment Payment is payable; or

(g) reduce the percentage of the Outstanding Purchase Contracts or the Units, as the case may be, whose Holder's consent is required for any modification, amendment or waiver of the provisions of this Agreement or the Purchase Contracts or the Units;

provided that if any such supplemental agreement would adversely affect only the Corporate Units or only the Treasury Units, then only the affected class of Holders as of the record date for the Holders entitled to vote thereon will be entitled to vote on such supplemental agreement, and such supplemental agreement shall not be effective except with the consent of Holders of not less than a majority of such class or, in the case of any supplemental agreement having the effects specified in clauses (a) through (g) of this Section 8.02, each Holder affected thereby.

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

Section 8.03 *Execution of Supplemental Agreements*. In executing, or accepting the additional agencies created by any supplemental agreement permitted by this Article VIII or the modifications thereby of the agencies created by this Agreement, the Purchase Contract Agent, the Collateral Agent, the Securities Intermediary and the Custodial Agent shall be provided, and (subject to Section 7.01 with respect to the Purchase Contract Agent) shall be fully authorized and 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 that any and all conditions precedent to the execution and delivery of such supplemental agreement have been satisfied. The Purchase Contract Agent, the Collateral Agent, the Securities Intermediary and the Custodial Agent may, but shall not be obligated to, enter into any such supplemental agreement that affects their own rights, duties or immunities under this Agreement or otherwise.

Section 8.04 *Effect of Supplemental Agreements*. Upon the execution of any supplemental agreement under this Article VIII, this Agreement shall be modified in accordance therewith, and such supplemental agreement shall form a part of this Agreement for all purposes; and every Holder of Certificates theretofore or thereafter authenticated, executed on behalf of the Holders and delivered hereunder, shall be bound thereby.

Section 8.05 *Reference to Supplemental Agreements*. Certificates authenticated, executed 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 Certificates so modified as to conform, in the opinion of the Purchase Contract Agent and the Company, to any such supplemental agreement may be prepared and executed by the Company and authenticated, executed on behalf of the Holders and delivered by the Purchase Contract Agent in exchange for Outstanding Certificates.

ARTICLE IX
CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 9.01 *Covenant Not to Consolidate, Merge, Convey, Transfer or Lease Property except under Certain Conditions*. The Company shall not merge or consolidate with any other Person or sell or convey all or substantially all of its assets to any Person, unless

(a) either the Company is the continuing entity, or the successor entity (if other than the Company) is a corporation organized and existing under the laws of the United States of America or a State thereof or the District of Columbia and such corporation expressly assumes all of the Company's responsibilities and liabilities under the Purchase Contracts, the Corporate Units, the Treasury Units, this Agreement, the Remarketing Agreement (if any) and the Indenture by one or more supplemental agreements in a form satisfactory to the Purchase Contract Agent, the Collateral Agent and the Trustee and that complies with Article VIII hereof or the applicable provisions of the Remarketing Agreement or the Indenture, as the case may be, executed and delivered to the Purchase Contract Agent, the Collateral Agent and the Trustee by such corporation, and

(b) the Company or such successor corporation, as the case may be, will not, immediately after such merger or consolidation, or such sale or conveyance, be in default in the performance of any of its obligations or covenants under such agreements.

Section 9.02 *Rights and Duties of Successor Person*. In case of any such consolidation, merger, sale or conveyance, and upon any such assumption by the successor corporation in accordance with Section 9.01, such successor corporation shall succeed to and be substituted for the Company, with the same effect as if it had been named in the Purchase Contracts, the Corporate Units, the Treasury Units, this Agreement and the Remarketing Agreement (if any) as the Company and (other than in the case of a lease) the Company shall be relieved of any further obligation under the Purchase Contracts, the Corporate Units, the Treasury Units, this Agreement and the Remarketing Agreement (if any). Such successor corporation 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 Certificates evidencing Units 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 instead of the Company, and subject to all the terms, conditions and limitations in this Agreement prescribed, the Purchase Contract Agent shall authenticate and execute on behalf of the Holders as their attorney-in-fact and deliver any Certificates which previously shall have been signed and delivered by the officers of the Company to the Purchase Contract Agent for authentication and execution, and any Certificate evidencing Units which such successor corporation thereafter shall cause to be signed and delivered to the Purchase Contract Agent for that purpose. All the Certificates issued shall in all respects have the same legal rank and benefit under this Agreement as the Certificates theretofore or thereafter issued in accordance with the terms of this Agreement as though all of such Certificates had been issued at the date of the execution hereof.

In case of any such merger, consolidation, sale or conveyance, such change in phraseology and form (but not in substance) may be made in the Certificates evidencing Units thereafter to be issued as may be appropriate.

Section 9.03 *Officer's Certificate and Opinion of Counsel Given to Purchase Contract Agent*. The Purchase Contract Agent, subject to Section 7.01 and Section 7.03, shall be entitled to receive an Officer's Certificate and an Opinion of Counsel and rely thereon as conclusive evidence that any such merger, consolidation, conveyance or sale, and any such assumption, complies with the provisions of this Article IX and that all conditions precedent to the consummation of any such merger, consolidation, conveyance or sale have been met.

ARTICLE X
COVENANTS

Section 10.01 *Performance under Purchase Contracts*. The Company covenants and agrees for the benefit of the Holders from time to time of the Units that it will duly and punctually perform its obligations under the Purchase Contracts in accordance with the terms of the Purchase Contracts and this Agreement.

Section 10.02 *Maintenance of Office or Agency*. The Company will maintain in the continental United States of America an office or agency, which may be the office of the Purchase Contract Agent or its agent, where Certificates may be presented or surrendered for acquisition of shares of Common Stock upon settlement of the Purchase Contracts on the Purchase Contract Settlement Date or upon an Early Settlement or a Fundamental Change Early Settlement and for transfer of Collateral upon occurrence of a Termination Event, an Early Settlement or a Fundamental Change Early Settlement, where Certificates may be surrendered for registration of transfer or exchange, or for a Collateral Substitution and where notices and demands to or upon the Company in respect of the Units 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 foregoing 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 initially designates the Corporate Trust Office as such office of the Company.

(a) The Company may also from time to time designate one or more other offices or agencies where Certificates 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 continental United States of America 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.

Section 10.03 *Company to Reserve Common Stock*. The Company shall at all times prior to the Purchase Contract Settlement Date reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock the maximum number of shares of Common Stock issuable against payment (including the maximum number of Make-Whole Shares issuable upon a Fundamental Change Early Settlement) in respect of all Purchase Contracts constituting a part of the Units evidenced by Outstanding Certificates.

Section 10.04 *Covenants as to Common Stock; Listing*. The Company covenants that all shares of Common Stock which may be issued against tender of payment in respect of any Purchase Contract constituting a part of the Outstanding Units will, upon issuance, be duly authorized, validly issued, fully paid and nonassessable.

(a) The Company further covenants that, if at any time the Common Stock shall be listed on the Nasdaq or any other national securities exchange or automated quotation system, the Company shall, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all Common Stock issuable upon settlement of Purchase Contracts.

(b) The Company shall use its commercially reasonable efforts to effect the listing of the Corporate Units on the Nasdaq within 30 days of the date of the initial issuance of the Corporate Units.

Section 10.05 *Statements of Officers of the Company as to Default*. The Company will deliver to the Purchase Contract Agent, within 120 days after the end of each fiscal year of the Company ending after the date hereof (which fiscal year ends on December 31st of each fiscal year), 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 of this Agreement, the Units or the Purchase Contracts and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 10.06 *ERISA*. Each Holder, by acceptance of the Units or any shares of Common Stock issuable upon settlement of the Purchase Contract or Notes, will be deemed to have represented and warranted that from and including the date of its acquisition of any such securities through and including the date of the satisfaction of the obligation under the Purchase Contract and/or the disposition of any such securities either (i) no portion of the assets used by such Holder to acquire or hold the Units or shares of Common Stock issuable upon settlement of the Purchase Contract or Notes (or by any Beneficial Owner with a Book-Entry Interest in such Units that is a Plan or that used assets of a Plan to acquire such Book-Entry Interest) constitutes assets of any Plan or (ii) (1) its acquisition, holding and disposition of the Units or shares of Common Stock issuable upon settlement of the Purchase Contract, (a) complies with all applicable requirements under Title I of ERISA, Section 4975 of the Code and Similar Laws applicable to the Plan, and (b) will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or a similar violation of any applicable Similar Laws, and (2) acknowledges and agrees that neither the Remarketing Agent nor the Company nor any of its Subsidiaries is, or is undertaking to be, a fiduciary with respect to any Plan in connection with the Plan's acquisition, holding or disposition of the Units or shares of Common Stock issuable upon settlement of the Purchase Contract.

Section 10.07 *Tax Treatment*. The Company, the Purchase Contract Agent and the Collateral Agent covenant and agree, and by acceptance of a Unit or Book-Entry Interest, each Holder and Beneficial Owner will be deemed to have agreed for U.S. federal, state and local income tax purposes (unless otherwise required by any taxing authority) (i) to treat each Beneficial Owner of a Corporate Unit or a Treasury Unit as the owner, separately, of each of the applicable Purchase Contract and the applicable interests in the Collateral, including the Notes underlying the Applicable Ownership Interests in Notes, the Applicable Ownership Interests in the Treasury Portfolio or the Treasury Securities, as the case may be, (ii) to treat the Notes as indebtedness, (iii) to allocate, as of the date hereof, 100% of the purchase price for a Corporate Unit to the Applicable Ownership Interests in Notes and 0% to each Purchase Contract, which will establish each Beneficial Owner's initial tax basis in each Purchase Contract as $0.00 and each Beneficial Owner's initial tax basis in each Applicable Ownership Interests in Notes as $50, and (iv) in all events, not to take any position for U.S. federal, state or local income tax purposes that is inconsistent with or contrary to the above covenants.

The Company agrees (i) to provide the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary with such reasonable information as it has in its possession to enable the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary to determine whether any payments pursuant to this Agreement are subject to the withholding requirements described in Section 1471(b) of the Code or otherwise imposed pursuant to Sections 1471 through 1474 of the Code and any regulations, or agreements thereunder or official interpretations thereof ("**Applicable Law**"), and (ii) that the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary shall be entitled to make any withholding or deduction from payments under this Agreement to the extent necessary to comply with Applicable Law, for which the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary shall not have any liability.

Section 10.08 *Remarketing Agreement*. On or prior to the date that is 20 days prior to the first day of the Final Remarketing Period or, if the Company shall have elected to conduct an Optional Remarketing, on or prior to the date that is 5 Business Days prior to the first day of the applicable Optional Remarketing Period, the Company shall have entered into, and shall have caused the Purchase Contract Agent and the Remarketing Agent to have entered into, the Remarketing Agreement.

ARTICLE XI
PLEDGE

Section 11.01 *Pledge*. Each Holder, acting through the Purchase Contract Agent as such Holder's attorney-in-fact, and the Purchase Contract Agent, acting solely as such attorney-in-fact, hereby pledges and grants to the Collateral Agent, as agent of and for the benefit of the Company, a continuing first priority perfected security interest in and to, and a lien upon and right of set-off against, all of such Person's right, title and interest in and to the Collateral, whether now existing or hereafter arising, to secure the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations. The Collateral Agent shall have all of the rights, remedies and recourses with respect to the Collateral afforded a secured party by the UCC, in addition to, and not in limitation of, the other rights, remedies and recourses afforded to the Collateral Agent by this Agreement or other applicable law.

Section 11.02 *Termination*. As to each Holder, the Pledge created hereby shall terminate upon the payment and performance in full of such Holder's Obligations, or (if earlier) upon any Termination Event. Promptly after such termination (as notified to the Collateral Agent by the Company pursuant to Section 5.07 or by the Holders of at least 25% of the aggregate Stated Amount of the Units in accordance with Section 3.15(b)), the Collateral Agent shall instruct the Securities Intermediary to Transfer the portion of the Collateral attributable to such Holder to the Purchase Contract Agent for distribution to such Holder, in accordance with the terms provided for herein, free and clear of the Pledge created hereby. As promptly as practicable following the termination of the Pledge with respect to any Collateral pursuant to this Section 11.02 or any other provision of this Agreement, the Company shall terminate any UCC financing statements that have been filed that relate to such Collateral (with written confirmation to the Collateral Agent and the Purchase Contract Agent), and take any other action that the Purchase Contract Agent or any Holder reasonably requests, to evidence the termination of the Pledge, in each case, at the sole expense of the Company.

ARTICLE XII
ADMINISTRATION OF COLLATERAL

Section 12.01 *Initial Deposit of Notes*. Prior to or concurrently with the execution and delivery of this Agreement, the Purchase Contract Agent, on behalf of the initial Holders of the Corporate Units, shall Transfer to the Securities Intermediary, for credit to the Collateral Account, the Applicable Ownership Interests in Notes and the Notes underlying such Applicable Ownership Interests in Notes by delivering such Notes indorsed in blank to the Securities Intermediary. The Securities Intermediary shall indicate by book entry that a securities entitlement with respect to such Applicable Ownership Interests in Notes (and the Notes underlying such Applicable Ownership Interests in Notes) has been credited to the Collateral Account.

(a) The Collateral Agent may, at any time or from time to time, in its sole discretion, cause any or all securities or other property underlying any financial assets credited to the Collateral Account to be registered in the name of the Securities Intermediary, the Collateral Agent or their respective nominees.

Section 12.02 *Establishment of Collateral Account*. The Securities Intermediary hereby confirms that:

(a) the Securities Intermediary has established the Collateral Account;

(b) the Collateral Account shall be maintained by the Securities Intermediary as a "securities account" as defined in Section 8-501(a) of the UCC and a "securities account" as defined in Article 1(b) of the Hague Securities Convention;

(c) subject to the terms of this Agreement, the Securities Intermediary shall identify in its records the Collateral Agent as the entitlement holder entitled to exercise the rights that comprise any financial asset credited to the Collateral Account;

(d) all property delivered to the Securities Intermediary pursuant to this Agreement, including any Applicable Ownership Interests in the Treasury Portfolio or the Treasury Securities and the Permitted Investments, will be credited promptly to the Collateral Account;

(e) all securities or other property underlying any financial assets credited to the Collateral Account shall be (i) registered in the name of the Collateral Agent and indorsed to the Securities Intermediary or in blank, (ii) registered in the name of the Securities Intermediary or (iii) credited to another securities account maintained in the name of the Securities Intermediary. In no case will any financial asset credited to the Collateral Account be registered in the name of the Collateral Agent (in its capacity as such) or any Holder or specially indorsed to the Collateral Agent (in its capacity as such) or any Holder, unless such financial asset has been further indorsed to the Securities Intermediary or in blank; and

(f) the Securities Intermediary is a "securities intermediary" (as defined in Section 8-102(a)(14) of the UCC) and an "intermediary" (as defined in Article 1(c) of the Hague Securities Convention) in respect of the Collateral Account.

Section 12.03 *Treatment as Financial Assets*. The Securities Intermediary hereby confirms and agrees that each item of property (whether investment property, financial asset, security, instrument or Cash) credited to the Collateral Account shall be treated a "financial asset" (as defined in Section 8-102(a)(9) of the UCC).

Section 12.04 *Sole Control by Collateral Agent*. Except as provided in Section 15.01, at all times prior to the termination of the Pledge, the Collateral Agent shall have sole control of the Collateral Account, and the Securities Intermediary shall take instructions and directions, and comply with entitlement orders, with respect to the Collateral Account or any financial asset credited thereto solely from the Collateral Agent. If at any time the Securities Intermediary receives an entitlement order issued by the Collateral Agent and relating to the Collateral Account, the Securities Intermediary shall comply with such entitlement order without further consent by the Purchase Contract Agent or any Holder or any other Person. Except as otherwise permitted under this Agreement, until termination of the Pledge, the Securities Intermediary will not comply with any entitlement orders issued by the Purchase Contract Agent or any Holder.

Section 12.05 *Jurisdiction*. The Collateral Account, and the rights and obligations of the Securities Intermediary, the Collateral Agent, the Purchase Contract Agent and the Holders with respect thereto, shall be governed by the internal laws of the State of New York. Regardless of any provision in any other agreement, the Securities Intermediary's jurisdiction in respect of the Collateral Account is the State of New York for purposes of the UCC. The Securities Intermediary, the Collateral Agent and the Purchase Contract Agent each confirms that this Agreement constitutes the sole agreement to which they are a party governing the Collateral Account.

Section 12.06 *No Other Claims*. Except for the claims and interest of the Collateral Agent and of the Purchase Contract Agent and the Holders in the Collateral Account, the Securities Intermediary (without having conducted any investigation) does not know of any claim to, or interest in, the Collateral Account or in any financial asset credited thereto. If the Securities Intermediary receives written notice at its Corporate Trust Office identified on the signature page hereto or if a Responsible Officer has actual knowledge that any Person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Collateral Account or in any financial asset carried therein, the Securities Intermediary will as soon as practicable notify the Collateral Agent and the Purchase Contract Agent.

Section 12.07 *Investment and Release*. Proceeds of financial assets from time to time credited to the Collateral Account shall be invested and reinvested to the extent provided in this Agreement. At all times prior to termination of the Pledge, no property shall be released from the Collateral Account except in accordance with this Agreement or upon written instructions of the Collateral Agent.

Section 12.08 *Statements and Confirmations*. The Securities Intermediary will as soon as practicable send copies of all statements, confirmations and other correspondence concerning the Collateral Account and any financial assets credited thereto simultaneously to each of the Purchase Contract Agent and the Collateral Agent at their addresses for notices under this Agreement.

Section 12.09 *[Reserved]*.

Section 12.10 *No Other Agreements*. The Securities Intermediary has not entered into, and prior to the termination of the Pledge will not enter into, any agreement with any other Person relating to the Collateral Account or any financial assets credited thereto, including, without limitation, any agreement to comply with entitlement orders of any Person other than the Collateral Agent.

Section 12.11 *Powers Coupled with an Interest*. The rights and powers granted in this Agreement to the Collateral Agent have been granted in order to perfect its security interests in the Collateral Account, are powers coupled with an interest and will be affected neither by the bankruptcy of the Purchase Contract Agent or any Holder nor by the lapse of time. The obligations of the Securities Intermediary under this Agreement shall continue in effect until the termination of the Pledge.

Section 12.12 *Waiver of Lien; Waiver of Set-off*. The Securities Intermediary waives any security interest, lien or right to make deductions or set-offs that it may now have or hereafter acquire in or with respect to the Collateral Account, any financial asset credited thereto or any security entitlement in respect thereof. Neither the financial assets credited to the Collateral Account nor the security entitlements in respect thereof will be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Company.

ARTICLE XIII
RIGHTS AND REMEDIES OF THE COLLATERAL AGENT

Section 13.01 *Rights and Remedies of the Collateral Agent*. In addition to the rights (including, without limitation, the rights extended pursuant to Section 7.03(k)) and remedies set forth herein or otherwise available at law or in equity, after a collateral event of default (as specified in Section 13.01(b)), the Collateral Agent shall have all of the rights and remedies with respect to the Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where the rights and remedies are asserted) and the TRADES Regulations and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted. Without limiting the generality of the foregoing, such remedies may include, to the extent permitted by applicable law, (1) causing any or all securities or other property underlying any financial assets credited to the Collateral Account to be registered in the name of the Securities Intermediary, the Collateral Agent or their respective nominees, (2) retention of the Notes underlying Pledged Applicable Ownership Interests in Notes, the Pledged Treasury Securities and/or the Pledged Applicable Ownership Interests in the Treasury Portfolio in full satisfaction of the Holders' obligations under the Purchase Contracts and this Agreement and/or (3) sale of the Notes underlying Pledged Applicable Ownership Interests in Notes, the Pledged Treasury Securities or the Pledged Applicable Ownership Interests in the Treasury Portfolio in one or more public or private sales.

(a) Without limiting any rights or powers otherwise granted by this Agreement to the Collateral Agent or under applicable law, in the event the Collateral Agent is unable to make payments to the Company on account of Proceeds of (i) the Notes underlying Pledged Applicable Ownership Interests in Notes (other than any interest payments thereon), (ii) Pledged Applicable Ownership Interests in the Treasury Portfolio, or (iii) the Pledged Treasury Securities as provided in this Agreement in satisfaction of the Obligations of the Holder of the Units of which such Notes underlying Pledged Applicable Ownership Interests in Notes, such Pledged Applicable Ownership Interests in the Treasury Portfolio or such Pledged Treasury Securities are a part under the related Purchase Contracts, the inability to make such payments shall constitute a "**collateral event of default**" hereunder and the Collateral Agent shall, for the benefit of the Company, have and may exercise, with reference to such Notes underlying Pledged Applicable Ownership Interests in Notes, Pledged Treasury Securities or Pledged Applicable Ownership Interests in the Treasury Portfolio, as applicable, any and all of the rights and remedies available to a secured party under the UCC and the TRADES Regulations after default by a debtor, and as otherwise granted herein or under any applicable law.

(b) Without limiting any rights or powers otherwise granted by this Agreement to the Collateral Agent or under applicable law, the Collateral Agent is hereby irrevocably authorized to receive, collect and apply to the satisfaction of the Obligations all payments with respect to (i) the Notes underlying Pledged Applicable Ownership Interests in Notes (other than any interest payments thereon), (ii) the Pledged Treasury Securities and (iii) the Pledged Applicable Ownership Interests in the Treasury Portfolio, subject, in each case, to the provisions of this Agreement, and as otherwise provided herein.

(c) The Purchase Contract Agent and each Holder agrees that, from time to time, upon the written request of the Collateral Agent, the Purchase Contract Agent, on behalf of such Holder, as attorney-in-fact of such Holder, shall execute and deliver such further documents and do such other acts and things as the Collateral Agent may reasonably request in order to maintain the Pledge, and the perfection and priority thereof, and to confirm the rights of the Collateral Agent hereunder; *provided* that in no event shall the Purchase Contract Agent or any other Agent be required to file any financing or continuation statements or recording of any documents or instruments in any public office at any time or times. The Purchase Contract Agent shall have no liability to any Holder for executing any documents or taking any such acts requested by the Collateral Agent hereunder, except for liability for its own grossly negligent acts, its own grossly negligent failure to act or its own willful misconduct. In addition to and without limiting the generality of the foregoing, the Purchase Contract Agent, each Holder, the Collateral Agent and each other applicable Agent each hereby irrevocably constitutes and appoints the Company or its designee, with full power of substitution, as its attorney-in-fact to take on its behalf and in its name, place and stead, any action necessary or desirable to perfect or maintain the perfection and priority of the Pledge and any actions related thereto, including any actions with respect to the filing or termination of any UCC financing statements.

ARTICLE XIV
REPRESENTATIONS AND WARRANTIES TO COLLATERAL AGENT; HOLDER COVENANTS

Section 14.01 *Representations and Warranties*. Each Holder from time to time, acting through the Purchase Contract Agent as attorney-in-fact (it being understood that the Purchase Contract Agent shall not be liable for any representation or warranty made by or on behalf of a Holder), hereby represents and warrants to the Collateral Agent and the Company (with respect to such Holder's interest in the Collateral), which representations and warranties shall be deemed repeated on each day a Holder effects a Transfer of Collateral, that:

(a) such Holder has the power to grant a security interest in and lien on the Collateral;

(b) such Holder is the sole beneficial owner of the Collateral and, in the case of Collateral delivered in physical form, is the sole holder of such Collateral and is the sole beneficial owner of, or has the right to Transfer, the Collateral it Transfers to the Collateral Agent for credit to the Collateral Account, free and clear of any security interest, lien, encumbrance, call, liability to pay money or other restriction other than the security interest and lien granted under Article XI;

(c) upon the Transfer of the Collateral to the Securities Intermediary for credit to the Collateral Account, the Collateral Agent, for the benefit of the Company, will have a valid and perfected first priority security interest therein (assuming that any central clearing operation or any securities intermediary or other entity not within the control of the Holder involved in the Transfer of the Collateral, including the Collateral Agent and the Securities Intermediary, gives the notices and takes the action required of it hereunder and under applicable law for perfection of that interest and assuming the establishment and exercise of control pursuant to Article XII); and

(d) the execution and performance by the Holder of its obligations under this Agreement will not result in the creation of any security interest, lien or other encumbrance on the Collateral (other than the security interest and lien granted under Article XI) or violate any provision of any existing law or regulation applicable to it or of any mortgage, charge, pledge, indenture, contract or undertaking to which it is a party or which is binding on it or any of its assets.

Section 14.02 *Covenants*. The Purchase Contract Agent and the Holders from time to time, acting through the Purchase Contract Agent as their attorney-in-fact (it being understood that the Purchase Contract Agent shall not be liable for any covenant made by or on behalf of a Holder), hereby covenant to the Collateral Agent and the Company that for so long as the Collateral remains subject to the Pledge:

(a) neither the Purchase Contract Agent nor such Holders will create or purport to create or allow to subsist any mortgage, charge, lien, pledge or any other security interest whatsoever over the Collateral or any part of it other than pursuant to this Agreement; and

(b) neither the Purchase Contract Agent nor such Holders will sell or otherwise dispose (or attempt to dispose) of the Collateral or any part of it except for the beneficial interest therein, subject to the Pledge hereunder, transferred in connection with a Transfer of the Units.

ARTICLE XV
THE COLLATERAL AGENT, THE CUSTODIAL AGENT AND THE SECURITIES INTERMEDIARY

Section 15.01 *Appointment, Powers and Immunities*. The Company hereby appoints U.S. Bank to act on its behalf as the Collateral Agent, the Custodial Agent and the Securities Intermediary hereunder, and the Company hereby (i) authorizes each of the Collateral Agent, the Custodial Agent and the Securities Intermediary to take such actions on its behalf and to exercise such powers as are delegated to such the Collateral Agent, the Custodial Agent and the Securities Intermediary by the terms hereof and (ii) authorizes and directs the Collateral Agent to take such actions as from time to time shall be required of the Collateral Agent under the terms of the Supplemental Indenture. The Collateral Agent, the Custodial Agent and the Securities Intermediary each hereby agrees to act in its respective capacity as such upon the express conditions contained herein. The Company accepts the authorizations, appointments, acknowledgments and other actions taken by the Collateral Agent, the Custodial Agent and the Securities Intermediary in accordance with this Agreement. The Collateral Agent, the Custodial Agent and the Securities Intermediary shall act solely as agent for the Company hereunder (and not as a fiduciary), shall not assume any obligation or relationship of agency or trust for or with any of the Holders, except for the obligations owed by a pledgee of property to the owner of the property under this Agreement and applicable law, and shall have such powers as are specifically vested in the Collateral Agent, the Custodial Agent and the Securities Intermediary, as the case may be, by the terms of this Agreement. Each Agent's duties hereunder and under the other documents executed in connection herewith are solely ministerial and administrative in nature. The Collateral Agent, the Custodial Agent and the Securities Intermediary shall:

(a) have no duties or responsibilities except those expressly set forth in this Agreement and no implied covenants or obligations shall be inferred from this Agreement against the Collateral Agent, the Custodial Agent or the Securities Intermediary, nor shall the Collateral Agent, the Custodial Agent or the Securities Intermediary be bound by the provisions of any agreement by any party hereto (to which the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be, is not a party) beyond the specific terms hereof;

(b) not be responsible for any recitals contained in this Agreement, or in any certificate or other document referred to or provided for in, or received by it under, this Agreement or the Units, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement (other than as against the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be), the Units, any Collateral or any other document referred to or provided for herein or therein or for any failure by the Company or any other Person (except the Collateral Agent, the Custodial Agent or Securities Intermediary, as the case may be) to perform any of its obligations hereunder or thereunder or for the perfection, priority or, except as expressly required hereby, maintenance of any security interest created hereunder;

(c) not be required to initiate or conduct any litigation or collection proceedings hereunder (except pursuant to directions furnished under Section 15.02, subject to Section 15.08);

(d) not be responsible for any action taken or omitted to be taken by it hereunder or under any other document or instrument referred to or provided for herein or in connection herewith or therewith, except for its own gross negligence or willful misconduct; and

(e) not be required to advise any party as to selling or retaining, or taking or refraining from taking any action with respect to, any securities or other property deposited hereunder.

Subject to the foregoing, during the term of this Agreement, the Collateral Agent, the Custodial Agent and the Securities Intermediary shall take all reasonable action in connection with the safekeeping and preservation of the Collateral hereunder as determined by industry standards.

No provision of this Agreement shall require the Collateral Agent, the Custodial Agent or the Securities Intermediary to expend or risk its own funds or otherwise incur any liability in the performance of any of its duties hereunder. In no event shall the Collateral Agent, the Custodial Agent or the Securities Intermediary be liable for any amount in excess of the value of the Collateral.

Section 15.02 *Instructions of the Company*. The Company shall have the right, by one or more written instruments executed and delivered to the Collateral Agent, to direct the time, method and place of conducting any proceeding for the realization of any right or remedy available to the Collateral Agent, or of exercising any power conferred on the Collateral Agent, or to direct the taking or refraining from taking of any action authorized by this Agreement; provided, however, that (i) such direction shall not conflict with the provisions of any law or of this Agreement or involve the Collateral Agent in personal liability and (ii) the Collateral Agent shall be indemnified and/or provided with security to its satisfaction as provided herein. Nothing contained in this Section 15.02 shall impair the right of the Collateral Agent in its discretion to take any action or omit to take any action which it deems proper and which is not inconsistent with such direction. None of the Collateral Agent, the Custodial Agent or the Securities Intermediary has any obligation or responsibility to file UCC financing or continuation statements.

Section 15.03 *Reliance by the Collateral Agent, the Custodial Agent and the Securities Intermediary*. Each of the Securities Intermediary, the Custodial Agent and the Collateral Agent (solely for purposes of this paragraph, the "**Agents**") shall be entitled to rely conclusively upon any certification, order, judgment, opinion, notice or other written communication (including, without limitation, any thereof by e-mail or similar electronic means or facsimile) believed by it in good faith to be genuine and to have been signed or sent by or on behalf of the proper Person or Persons (without being required to determine the correctness of any fact stated therein) and consult with and conclusively rely upon advice, opinions and statements of legal counsel and other experts selected by the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be. As to any discretionary action or matters not expressly provided for by this Agreement, each Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions given by the Company or the Holders, as the case may be, or by another Agent, as the case may be, in accordance with the terms of this Agreement; provided, however, it is understood that in all cases the Agent shall be fully justified in failing or refusing to take any such action under this Agreement if it shall not have received such direction from the Company or the Holders (acting in accordance with this Agreement) or from another Agent (acting in accordance with this Agreement), as such Agent deems appropriate. This provision is intended solely for the benefit of the Agents and their successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

Section 15.04 *Certain Rights*. Whenever in the administration of the provisions of this Agreement the Collateral Agent, the Custodial Agent or the Securities Intermediary shall deem it necessary or desirable that a matter be proved or established prior to taking, or omitting to take, or suffering any action hereunder, or suffering to exist any state of events, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Collateral Agent, the Custodial Agent or the Securities Intermediary, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Collateral Agent, the Custodial Agent or the Securities Intermediary and such certificate, in the absence of bad faith on the part of the Collateral Agent, the Custodial Agent or the Securities Intermediary, shall be full warrant to the Collateral Agent, the Custodial Agent or the Securities Intermediary for any action taken, suffered or omitted by it under the provisions of this Agreement in reliance thereon.

(a) The Collateral Agent, the Custodial Agent or the Securities Intermediary 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, entitlement order, approval or other paper or document that it reasonably believes to be genuine.

(b) The authorizations, rights, privileges, protections and benefits given to each of the Collateral Agent, the Custodial Agent or the Securities Intermediary are extended to, and shall be enforceable by, each such Collateral Agent, Custodial Agent or Securities Intermediary under any document to which it is a party. In the event any claim of inconsistency between this Agreement and the terms of any other document arises with respect to the duties, liabilities and rights of the Collateral Agent, the Custodial Agent or the Securities Intermediary, the terms of this Agreement shall control.

Section 15.05 *Merger, Conversion, Consolidation or Succession to Business*. Any Person or national association into which the Collateral Agent, the Custodial Agent or the Securities Intermediary may be merged or converted or with which it may be consolidated, or any Person or national association resulting from any merger, conversion or consolidation to which the Collateral Agent, the Custodial Agent or the Securities Intermediary shall be a party, or any Person or national association succeeding to all or substantially all of the corporate trust business of the Collateral Agent (including the administration of this Agreement), the Custodial Agent or the Securities Intermediary shall be the successor of the Collateral Agent, the Custodial Agent or the Securities Intermediary hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

Section 15.06 *Rights in Other Capacities*. The Collateral Agent, the Custodial Agent and the Securities Intermediary and their Affiliates may (without having to account therefor to the Company) accept deposits from, lend money to, make their investments in and generally engage in any kind of banking, trust or other business with the Purchase Contract Agent, any other Person interested herein and any Holder (and any of their respective Subsidiaries or Affiliates) as if it were not acting as the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be, and the Collateral Agent, the Custodial Agent, the Securities Intermediary and their Affiliates may accept fees and other consideration from the Purchase Contract Agent and any Holder without having to account for the same to the Company; provided that each of the Collateral Agent, the Custodial Agent and the Securities Intermediary covenants and agrees with the Company that it shall not accept, receive or permit there to be created in favor of itself and shall take no affirmative action to permit there to be created in favor of any other Person, any security interest, lien or other encumbrance of any kind in or upon the Collateral other than the lien created by the Pledge.

Section 15.07 *Non-reliance on the Collateral Agent, the Custodial Agent and the Securities Intermediary*. None of the Collateral Agent, the Custodial Agent and the Securities Intermediary shall be required to keep itself informed as to the performance or observance by the Purchase Contract Agent or any Holder of this Agreement, the Units or any other document referred to or provided for herein or therein or to inspect the properties or books of the Purchase Contract Agent or any Holder. None of the Collateral Agent, the Custodial Agent or the Securities Intermediary shall have any duty or responsibility to provide the Company with any credit or other information concerning the affairs, financial condition or business of the Purchase Contract Agent or any Holder (or any of their respective Affiliates) that may come into the possession of the Collateral Agent, the Custodial Agent or the Securities Intermediary or any of their respective Affiliates.

Section 15.08 *Compensation and Indemnity*. The Company agrees to:

(a) pay the Collateral Agent, the Custodial Agent and the Securities Intermediary from time to time such compensation as shall be agreed in writing between the Company and the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be, for all services rendered by them hereunder;

(b) indemnify and hold harmless the Collateral Agent, the Custodial Agent, the Securities Intermediary and each of their respective directors, officers, agents, partners, members, trustees, advisors, sub-agents and employees (collectively, the "**Pledge Indemnitees**") from and against any and all claims, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including reasonable fees and out of pocket expenses of outside counsel) (collectively, "**Losses**" and individually, a "**Loss**") that may be imposed on, incurred by, or asserted against, the Pledge Indemnitees or any of them for following any instructions or other directions upon which any of the Collateral Agent, the Custodial Agent or the Securities Intermediary is entitled to rely pursuant to the terms of this Agreement, *provided* that the Collateral Agent, the Custodial Agent or the Securities Intermediary has not acted with gross negligence or engaged in willful misconduct (as determined by a final, non-appealable judgment of a court of competent jurisdiction) with respect to the specific Loss against which indemnification is sought; and

(c) in addition to and not in limitation of paragraph (b) of this Section 15.08, indemnify and hold the Pledge Indemnitees and each of them harmless from and against any and all Losses that may be imposed on, incurred by or asserted against, the Pledge Indemnitees or any of them in connection with or arising out of the Collateral Agent's, the Custodial Agent's or the Securities Intermediary's acceptance or performance of its powers and duties under this Agreement; *provided* that the Collateral Agent, the Custodial Agent or the Securities Intermediary has not acted with gross negligence or engaged in willful misconduct (as determined by a final, non-appealable judgment of a court of competent jurisdiction) with respect to the specific Loss against which indemnification is sought, including the Pledge Indemnitees' reasonable out-of-pocket costs and expenses of defending themselves against any claim or liability (whether asserted by the Company, any Holder of Units, or otherwise) in connection with the exercise or performance of any of the Collateral Agent's, the Custodial Agent's or Securities Intermediary's powers or duties hereunder or thereunder or of enforcing the provisions of this Section 15.08 and Section 15.14.

The provisions of this Section 15.08 and Section 15.14 shall survive the resignation or removal of the Collateral Agent, the Custodial Agent or the Securities Intermediary and the termination of this Agreement.

Section 15.09 *Failure to Act*. In the event that, in the good faith, reasonable belief of the Collateral Agent, the Custodial Agent or the Securities Intermediary, an ambiguity in the provisions of this Agreement arises or any actual dispute between or conflicting claims by or among the parties hereto or any other Person with respect to any funds or property deposited hereunder has been asserted in writing, then at its sole option, each of the Collateral Agent, the Custodial Agent and the Securities Intermediary shall be entitled, after prompt notice to the Company and the Purchase Contract Agent, to refuse to comply with any and all claims, demands or instructions with respect to such property or funds so long as such dispute or conflict shall continue, and the Collateral Agent, the Custodial Agent and the Securities Intermediary, as the case may be, shall not be or become liable in any way to any of the parties hereto for its failure or refusal to comply with such conflicting claims, demands or instructions. In such event, the Collateral Agent, the Custodial Agent and the Securities Intermediary shall be entitled to refuse to act until either:

(a) such conflicting or adverse claims or demands shall have been finally determined by a court of competent jurisdiction or settled by agreement between the conflicting parties as evidenced in a writing reasonably satisfactory to the Collateral Agent, the Custodial Agent or the Securities Intermediary; or

(b) the Collateral Agent, the Custodial Agent or the Securities Intermediary shall have received an indemnity and/or security satisfactory to it sufficient to hold it harmless from and against any and all loss, liability or reasonable out-of-pocket expense which it may incur by reason of its acting.

The Collateral Agent, the Custodial Agent and the Securities Intermediary may in addition elect to commence an interpleader action or seek other judicial relief or orders as the Collateral Agent, the Custodial Agent or the Securities Intermediary may deem necessary. Notwithstanding anything contained herein to the contrary, none of the Collateral Agent, the Custodial Agent or the Securities Intermediary shall be required to take any action that is in its opinion contrary to law or to the terms of this Agreement, or which would in its opinion subject it or any of its officers, employees or directors to personal liability.

Section 15.10 *Resignation of the Collateral Agent, the Custodial Agent and the Securities Intermediary*. Subject to the appointment and acceptance of a successor Collateral Agent, Custodial Agent or Securities Intermediary as provided below:

(i) the Collateral Agent, the Custodial Agent or the Securities Intermediary may resign at any time by giving notice thereof to the Company and the Purchase Contract Agent as attorney-in-fact for the Holders;

(ii) the Collateral Agent, the Custodial Agent or the Securities Intermediary may be removed at any time by the Company; and

(iii) if the Collateral Agent, the Custodial Agent or the Securities Intermediary fails to perform any of its material obligations hereunder in any material respect for a period of not less than 20 days after receiving written notice of such failure by the Purchase Contract Agent and such failure shall be continuing, the Collateral Agent, the Custodial Agent and the Securities Intermediary may be removed by the Purchase Contract Agent, acting at the direction of Holders of a majority of the Units.

The Purchase Contract Agent shall promptly notify the Company upon the transmission of notice as contemplated by clause (iii) of this Section 15.10 and any removal of the Collateral Agent, the Custodial Agent or the Securities Intermediary pursuant to clause (iii) of this Section 15.10. Upon any such resignation or removal under this Section 15.10, the Company shall have the right to appoint a successor Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be, which shall not be an Affiliate of the Purchase Contract Agent. If no successor Collateral Agent, Custodial Agent or Securities Intermediary shall have been so appointed and shall have accepted such appointment within 45 days after the retiring Collateral Agent's, Custodial Agent's or Securities Intermediary's giving of notice of resignation or the Company's or the Purchase Contract Agent's giving notice of such removal, then the retiring or removed Collateral Agent, Custodial Agent or Securities Intermediary may petition any court of competent jurisdiction, at the expense of the Company, for the appointment of a successor Collateral Agent, Custodial Agent or Securities Intermediary. The Collateral Agent, the Custodial Agent and the Securities Intermediary shall each be a bank or a national banking association (which has an office or agency in the continental United States) with a combined capital and surplus of at least $50,000,000. Upon the acceptance of any appointment as Collateral Agent, Custodial Agent or Securities Intermediary hereunder by a successor Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be, such successor Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be, shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be, and the retiring Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be, shall take all appropriate action, subject to payment of any amounts then due and payable to it hereunder, to transfer any money and property held by it hereunder (including the Collateral) to such successor. The retiring Collateral Agent, Custodial Agent or Securities Intermediary shall, upon such succession, be discharged from its duties and obligations as Collateral Agent, Custodial Agent or Securities Intermediary hereunder. After any retiring Collateral Agent's, Custodial Agent's or Securities Intermediary's resignation hereunder as Collateral Agent, Custodial Agent or Securities Intermediary, the provisions of this Article XV shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Collateral Agent, the Custodial Agent or the Securities Intermediary. Any resignation or removal of the Collateral Agent, the Custodial Agent or the Securities Intermediary hereunder, at a time when such Person is also acting as the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be, shall be deemed for all purposes of this Agreement as the simultaneous resignation or removal of the Collateral Agent, the Securities Intermediary or the Custodial Agent, as the case may be.

Section 15.11 *Right to Appoint Agent or Advisor*. The Collateral Agent shall have the right to appoint agents or advisors in connection with any of its duties hereunder, and the Collateral Agent shall not be liable for any action taken or omitted by, or in reliance upon the advice of, such agents or advisors selected in good faith. The appointment of agents pursuant to this Section 15.11 shall be subject to prior written consent of the Company, which consent shall not be unreasonably withheld.

Section 15.12 *Survival*. The provisions of this Article XV shall survive termination of this Agreement and the resignation or removal of the Collateral Agent, the Custodial Agent or the Securities Intermediary.

Section 15.13 *Exculpation*. Anything contained in this Agreement to the contrary notwithstanding, in no event shall the Collateral Agent, the Custodial Agent or the Securities Intermediary or their officers, directors, employees or agents be liable under this Agreement for indirect, special, punitive, or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, whether or not the likelihood of such loss or damage was known to the Collateral Agent, the Custodial Agent or the Securities Intermediary, or any of them and regardless of the form of action.

Section 15.14 *Expenses, Etc.*. The Company agrees to reimburse the Collateral Agent, the Custodial Agent and the Securities Intermediary for:

(a) all reasonable costs, fees and out-of-pocket expenses of the Collateral Agent, the Custodial Agent and the Securities Intermediary (including, without limitation, the reasonable fees and expenses of counsel to the Collateral Agent, the Custodial Agent and the Securities Intermediary) in connection with (i) the negotiation, preparation, execution and delivery or performance of this Agreement (excluding taxes that are based on or measured by income in whole or in part (including franchise taxes)) and (ii) any modification, supplement or waiver of any of the terms of this Agreement;

(b) all reasonable costs, fees and out-of-pocket expenses of the Collateral Agent, the Custodial Agent and the Securities Intermediary (including, without limitation, reasonable fees and expenses of counsel) in connection with (i) any enforcement or proceedings resulting or incurred in connection with causing any Holder to satisfy its obligations under the Purchase Contracts forming a part of the Units and (ii) the enforcement of this Section 15.14;

(c) all transfer, stamp, documentary or other similar taxes, assessments or charges levied by any governmental or revenue authority in respect of this Agreement and all costs, expenses, taxes, assessments and other charges incurred in connection with any filing, registration, recording or perfection of any security interest contemplated hereby;

(d) all reasonable fees and out-of-pocket expenses of any agent or advisor appointed by the Collateral Agent and consented to by the Company under Section 15.11; and

(e) any other out-of-pocket costs and expenses (excluding taxes) reasonably incurred by the Collateral Agent, the Custodial Agent and the Securities Intermediary in connection with the performance of their duties hereunder.

Section 15.15 *Force Majeure*. In no event shall any of the Collateral Agent, the Custodial Agent and the Securities Intermediary be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused by circumstances beyond its control, including, without limitation, acts of God; earthquake; fires; floods; wars; civil or military disturbances; terrorist acts; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities; labor disputes; acts of civil or military authority or governmental actions; or other unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility, in each case, which delay, restrict or prohibit the providing of services contemplated by this Agreement; it being understood that the Collateral Agent, the Custodial Agent and the Securities Intermediary shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under such circumstances.

ARTICLE XVI
MISCELLANEOUS

Section 16.01 *Security Interest Absolute*. All rights of the Collateral Agent and security interests hereunder, and all obligations of the Holders from time to time hereunder pursuant to the Pledge, shall be absolute and unconditional irrespective of:

(a) any lack of validity or enforceability of any provision of the Purchase Contracts or the Units or any other agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or any other term of, or any increase in the amount of, all or any of the Obligations of Holders of the Units under the related Purchase Contracts, or any other amendment or waiver of any term of, or any consent to any departure from any requirement of, this Agreement or any Purchase Contract or any other agreement or instrument relating thereto; or

(c) any other circumstance which might otherwise constitute a defense available to, or discharge of, a borrower, a guarantor or a pledgor.

Section 16.02 *No Implied Duties*.

The duties and obligations of the Agent shall be determined solely by the express terms of this Agreement, and no duties, obligations or responsibilities shall be implied into this Agreement against the Agent.

Section 16.03 *Instructions to U.S. Bank*. Upon U.S. Bank's receipt of any initial direction, notice or instruction hereunder, any further instruction, notice or direction that U.S. Bank is required to make to U.S. Bank in its other capacities under the terms of this Agreement shall be deemed by the Company as being made by U.S. Bank in such other capacities without any further action by U.S. Bank in such other capacities.

Section 16.04 *Calculations*. For the avoidance of doubt, the Company will be responsible for making all calculations called for under this Agreement and the Certificates and neither the Purchase Contract Agent nor any other Agent will be responsible for performing any such calculations or for monitoring the price of the Common Stock.

Section 16.05 *PATRIOT Act*

. The parties hereto acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Agent such information as it may request, from time to time, in order for the Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

[SIGNATURES ON THE FOLLOWING PAGE]

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

H2O AMERICA

By: /s/ Ann P. Kelly
Name: Ann P. Kelly
Title: Chief Financial Officer and Treasurer

Address for Notices:

H2O America
110 West Taylor Street
San Jose, California 95110
Attention: Willie Brown, General Counsel

with copies to (which shall not constitute notice):

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: Robert Downes

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Purchase Contract Agent, Collateral Agent, Custodial Agent and Securities Intermediary and as attorney-in-fact of the Holders from time to time of the Units

By: /s/ Laurel Casasanta
Name: Laurel Casasanta
Title: Vice President

Address for Notices:

U.S. Bank Trust Company, National Association
CityPlace I, 185 Asylum Street, 27th Floor Hartford, CT 06103
Attention: Global Corporate Trust

EXHIBIT A

(FORM OF FACE OF CORPORATE UNITS CERTIFICATE)

[For inclusion in Global Certificate only - THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE PURCHASE CONTRACT AND PLEDGE AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF CEDE & CO., AS THE NOMINEE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (THE "DEPOSITORY"), THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITORY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE PURCHASE CONTRACT AND PLEDGE AGREEMENT AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITORY TO A NOMINEE OF THE DEPOSITORY OR BY A NOMINEE OF THE DEPOSITORY TO THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

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

No. _____ CUSIP No. 40447N 304

Number of Corporate Units: _____ ISIN No. US40447N3044

Dated: _____

H2O AMERICA

Corporate Units

This Corporate Units Certificate certifies that [Cede & Co.] is the registered Holder of the number of Corporate Units set forth above [For inclusion in Global Certificates only - or such other number of Corporate Units reflected in the Schedule of Increases or Decreases in Global Certificate attached hereto, which number, taken together with the number of all other Outstanding Corporate Units and the number of all Outstanding Treasury Units, shall not exceed 7,475,000 Units. Each Corporate Unit consists of (i) the rights and obligations of the Holder under one Purchase Contract with the Company pursuant to which (A) the Holder will agree to purchase from the Company, and the Company will agree to sell to the Holder, on the Purchase Contract Settlement Date (unless a Termination Event, an Early Settlement or a Fundamental Change Early Settlement has occurred), for the Stated Amount in Cash, a number of shares of Common Stock equal to the Settlement Rate, subject to anti-dilution adjustments, and (B) the Company will pay the Holder quarterly Contract Adjustment Payments, subject to the Company's right to defer such Contract Adjustment Payments, and (ii) either (A) an Applicable Ownership Interests in Notes or (B) upon the occurrence of a Successful Optional Remarketing during an Optional Remarketing Period, the Applicable Ownership Interests in the Treasury Portfolio, subject to the pledge of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of Applicable Ownership Interests in the Treasury Portfolio) by such Holder pursuant to the Purchase Contract and Pledge Agreement.

All capitalized terms used herein that are defined in the Purchase Contract and Pledge Agreement (as defined on the reverse hereof) have the meanings set forth therein.

In the event of any inconsistency between the provisions of this Corporate Units Certificate and the provisions of the Purchase Contract and Pledge Agreement, the provisions of the Purchase Contract and Pledge Agreement shall govern and control.

Pursuant to the Purchase Contract and Pledge Agreement, the Applicable Ownership Interests in Notes or the portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of Applicable Ownership Interests in the Treasury Portfolio), as the case may be, constituting part of each Corporate Unit evidenced hereby have been pledged to the Collateral Agent, for the benefit of the Company, to secure the Obligations of the Holder under the Purchase Contract comprising part of such Corporate Unit.

All payments of interest on the Pledged Applicable Ownership Interests in Notes or distributions with respect to the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (ii) of the definition of Applicable Ownership Interests in the Treasury Portfolio), as the case may be, constituting part of the Corporate Units shall be paid on the dates and in the manner set forth in the Purchase Contract and Pledge Agreement. Interest on the Notes underlying the Applicable Ownership Interests in Notes or distributions on the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (ii) of the definition of Applicable Ownership Interests in the Treasury Portfolio), as the case may be, forming part of the Corporate Units evidenced hereby, which are payable on each Payment Date (or, in the case of distributions on the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (ii) of the definition of Applicable Ownership Interests in the Treasury Portfolio), which is payable on the maturity date thereof), shall, subject to receipt thereof by the Purchase Contract Agent, be paid to the Person in whose name this Corporate Units Certificate (or a Predecessor Corporate Units Certificate) is registered at the close of business on the Record Date for the relevant Payment Date.

Each Purchase Contract evidenced hereby obligates the Holder of this Corporate Units Certificate to purchase, and the Company to sell, on the Purchase Contract Settlement Date, at a Purchase Price equal to the Stated Amount, a number of shares of Common Stock, equal to the Settlement Rate, unless on or prior to the Purchase Contract Settlement Date there shall have occurred a Termination Event, an Early Settlement or a Fundamental Change Early Settlement with respect to such Purchase Contract, all as provided in the Purchase Contract and Pledge Agreement. The Purchase Price for the shares of Common Stock purchased pursuant to each Purchase Contract evidenced hereby, if not paid earlier, shall be paid on the Purchase Contract Settlement Date by application of payment received in the Final Remarketing of the Notes underlying the Pledged Applicable Ownership Interests in Notes equal to the principal amount thereof or the proceeds of the Pledged Applicable Ownership Interests in the Treasury Portfolio, as the case may be, pledged to secure the Holder's Obligations under such Purchase Contract.

Interest on the Applicable Ownership Interests in Notes and distributions on the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (ii) of the definition of Applicable Ownership Interests in the Treasury Portfolio), to the extent payable to the Holder pursuant to the Purchase Contract and Pledge Agreement, if the book-entry system for the Units has been terminated, will be payable by check mailed to the address of the Holder as it appears on the Security Register or, if the Holder so requests and designates an account in writing to the Purchase Contract Agent by 5:00 p.m., New York City time, at least five Business Days prior to the relevant Payment Date, by wire transfer to such account. All payments with respect to Global Certificates will be made by wire transfer of immediately available funds to the Depository.

Each Purchase Contract evidenced hereby obligates each Holder and Beneficial Owner to agree, for U.S. federal, state and local income tax purposes (unless otherwise required by any taxing authority) (i) to treat each Beneficial Owner of a Corporate Unit as the owner, separately, of each of the applicable Purchase Contract and the applicable interests in the Collateral, including the Notes underlying the Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, (ii) to treat the Notes as indebtedness, (iii) to allocate, as of the date hereof, 100% of the purchase price for a Corporate Unit to the Applicable Ownership Interests in Notes and 0% to each Purchase Contract, which will establish each Beneficial Owner's initial tax basis in each Purchase Contract as $0.00 and each Beneficial Owner's initial tax basis in each Applicable Ownership Interests in Notes as $50, and (iv) in all events, not to take any position for U.S. federal, state or local income tax purposes that is inconsistent with or contrary to the above covenants.

The Company shall pay, on each Contract Adjustment Payment Date, in respect of each Purchase Contract forming part of a Corporate Unit evidenced hereby, an amount (the "Contract Adjustment Payments") equal to 2.450% per year of the Stated Amount, computed on the basis of a 360-day year consisting of twelve 30-day months. Such Contract Adjustment Payments shall be payable to the Person in whose name this Corporate Units Certificate is registered at the close of business on the Record Date for such Contract Adjustment Payment Date. The Company may, at its option, defer such Contract Adjustment Payments as described in the Purchase Contract and Pledge Agreement. The Contract Adjustment Payments are unsecured and will rank subordinate and junior in right of payment to all of the Company's existing and future senior indebtedness.

If the book-entry system for the Corporate Units has been terminated, the Contract Adjustment Payments will be payable by check mailed to the address of the Person entitled thereto at such Person's address as it appears on the Security Register or, if such Person so requests and designates an account in writing to the Purchase Contract Agent by 5:00 p.m., New York City time, at least five Business Days prior to the relevant Payment Date, by wire transfer to such account.

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.

Unless the certificate of authentication hereon has been executed by the Purchase Contract Agent by manual signature, this Corporate Units Certificate shall not be entitled to any benefit under the Purchase Contract and Pledge Agreement or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company and the Holder specified above have caused this instrument to be duly executed.

Attested:

By: _____
Name:
Title:

H2O AMERICA

By: _____
Name:
Title:

HOLDER SPECIFIED ABOVE (as to obligations of such Holder under the Purchase Contracts)

By: U.S. Bank Trust Company, National Association, not individually but solely as attorney-in-fact of such Holder

By: _____
Authorized Signatory

CERTIFICATE OF AUTHENTICATION OF
PURCHASE CONTRACT AGENT

This is one of the Corporate Units Certificates referred to in the within mentioned Purchase Contract and Pledge Agreement.

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

By: _____
Authorized Signatory

(REVERSE OF CORPORATE UNITS CERTIFICATE)

Each Purchase Contract evidenced hereby is governed by the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (as may be supplemented from time to time, the "Purchase Contract and Pledge Agreement"), among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the Holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent, and as Securities Intermediary, to which Purchase Contract and Pledge Agreement and any supplemental agreements thereto reference is hereby made 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 Corporate Units Certificates are, and are to be, executed and delivered.

Each Purchase Contract evidenced hereby obligates the Holder of this Corporate Units Certificate to purchase, and the Company to sell, on the Purchase Contract Settlement Date at a price equal to the Stated Amount, a number of shares of Common Stock equal to the Settlement Rate, unless an Early Settlement, a Fundamental Change Early Settlement or a Termination Event with respect to the Unit of which such Purchase Contract is a part shall have occurred. The Settlement Rate is subject to adjustment as described in the Purchase Contract and Pledge Agreement.

No fractional shares of Common Stock will be issued upon settlement of any Purchase Contracts, as provided in Section 5.09 of the Purchase Contract and Pledge Agreement.

Each Purchase Contract evidenced hereby that is settled through Early Settlement or Fundamental Change Early Settlement shall obligate the Holder of the related Corporate Units to purchase at the Purchase Price, and the Company to sell, a number of shares of Common Stock equal to the Minimum Settlement Rate, in the case of an Early Settlement, or the Settlement Rate plus the applicable number of Make-Whole Shares (determined, in each case, as set forth in the Purchase Contract and Pledge Agreement), in the case of a Fundamental Change Early Settlement.

In accordance with the terms of the Purchase Contract and Pledge Agreement, unless a Termination Event shall have occurred, the Holder of this Corporate Units Certificate shall pay the Purchase Price for the shares of Common Stock purchased pursuant to each Purchase Contract evidenced hereby by effecting a Cash Settlement, an Early Settlement or a Fundamental Change Early Settlement, from the proceeds of the portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of Applicable Ownership Interests in the Treasury Portfolio), from the proceeds of a Final Remarketing of the Notes underlying the Pledged Applicable Ownership Interests in Notes or from the exercise of a Holder's Put Right. Unless a Termination Event has occurred, a Holder of Corporate Units who (1) does not make an effective Cash Settlement in the manner and by the time provided in Section 5.02(b)(ix) or 5.03(a) of the Purchase Contract and Pledge Agreement, (2) does not, in the manner and at the times provided in the Purchase Contract and Pledge Agreement, make an effective Early Settlement and (3) does not, in the manner and at the times provided in the Purchase Contract and Pledge Agreement, make an effective Fundamental Change Early Settlement, shall pay the Purchase Price, as described in the Purchase Contract and Pledge Agreement, for the shares of Common Stock to be delivered under the related Purchase Contract (1) in the case of a Successful Final Remarketing, from the proceeds of the sale of the Notes underlying the Pledged Applicable Ownership Interests in Notes credited to the Collateral Account in the Final Remarketing, (2) in the case of a Successful Optional Remarketing, from the proceeds at maturity of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of Applicable Ownership Interests in the Treasury Portfolio) or (3) in the case of a Failed Remarketing, from the proceeds of the exercise of a Holder's Put Right, as described below.

As provided in the Purchase Contract and Pledge Agreement, upon the occurrence of a Failed Final Remarketing, as of the Purchase Contract Settlement Date, each Holder of any Pledged Applicable Ownership Interests in Notes, unless such Holder has elected Cash Settlement and delivered Cash in accordance with Section 5.02(b)(ix) of the Purchase Contract and Pledge Agreement, shall be deemed to have exercised such Holder's Put Right with respect to the Notes underlying such Applicable Ownership Interests in Notes and to have elected to apply the Proceeds of the Put Right therefor against such Holder's obligation to pay the aggregate Purchase Price for the shares of Common Stock to be issued under the related Purchase Contracts in full satisfaction of such Holders' Obligations under such Purchase Contracts.

The Company shall not be obligated to issue any shares of Common Stock in respect of a Purchase Contract or deliver any certificates therefor to the Holder unless it shall have received payment of the aggregate Purchase Price, as described in the Purchase Contract and Pledge Agreement, for the shares of Common Stock to be purchased thereunder in the manner set forth in the Purchase Contract and Pledge Agreement.

The Purchase Contracts and all obligations and rights of the Company and the Holders thereunder, including, without limitation, the rights of the Holders to receive and the obligation of the Company to pay any Contract Adjustment Payments, shall immediately and automatically terminate, without the necessity of any notice or action by any Holder, the Purchase Contract Agent or the Company, if, on or prior to the Purchase Contract Settlement Date, a Termination Event shall have occurred. Upon the occurrence of a Termination Event, the Company shall give written notice to the Purchase Contract Agent, the Collateral Agent, and the Holders, at their addresses as they appear in the Security Register. Upon and after the occurrence of a Termination Event, the Collateral Agent shall release the Notes underlying the Pledged Applicable Ownership Interests in Notes or the portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of such term) forming a part of each Corporate Unit, and all other Collateral, from the Pledge. A Corporate Unit shall thereafter represent the right to receive the Notes underlying the Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio forming a part of such Corporate Units in accordance with the terms of the Purchase Contract and Pledge Agreement.

Under the terms of the Purchase Contract and Pledge Agreement, the Purchase Contract Agent shall exercise the voting and any other consensual rights pertaining to the Notes underlying the Pledged Applicable Ownership Interests in Notes to the extent instructed in writing by the Holders. Upon receipt of notice of any meeting at which holders of Notes are entitled to vote or upon any solicitation of consents, waivers or proxies of holders of Notes, the Purchase Contract Agent shall, as soon as practicable thereafter, mail, first class, postage prepaid, to the Corporate Units Holders the notice required by the Purchase Contract and Pledge Agreement.

Subject to the provisions of the Purchase Contract and Pledge Agreement, upon the occurrence of a Successful Optional Remarketing and receipt in the Collateral Account of the proceeds thereof, the Collateral Agent shall instruct the Securities Intermediary to apply an amount equal to the Treasury Portfolio Purchase Price to purchase the Treasury Portfolio.

Following the occurrence of a Successful Optional Remarketing, the Holders of Corporate Units and the Collateral Agent shall have such security interests, rights and obligations with respect to the portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of such term) as the Holder of Corporate Units and the Collateral Agent had in respect of Applicable Ownership Interests in Notes and the underlying Notes, subject to the Pledge thereof as provided in the Purchase Contract and Pledge Agreement, and any reference herein to the Notes or Applicable Ownership Interests in Notes shall be deemed to be a reference to the Treasury Portfolio or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be.

The Corporate Units Certificates are issuable only in registered form and only in denominations of a single Corporate Unit and any integral multiple thereof. The transfer of any Corporate Units Certificate will be registered and Corporate Units Certificates may be exchanged as provided in the Purchase Contract and Pledge Agreement. A Holder who elects to substitute Treasury Securities with an aggregate principal amount at maturity equal to the aggregate principal amount of Notes underlying the Applicable Ownership Interests in Notes, thereby creating Treasury Units, shall be responsible for any fees or expenses payable in connection therewith. Except as provided in the Purchase Contract and Pledge Agreement, such Corporate Unit shall not be separable into its constituent parts, and the rights and obligations of the Holder of such Corporate Unit in respect of the Applicable Ownership Interests in Notes, or Applicable Ownership Interests in the Treasury Portfolio, as the case may be, and the Purchase Contract constituting such Corporate Units may be acquired, and may be transferred and exchanged, only as a Corporate Unit.

Subject to, and in compliance with, the terms and conditions set forth in the Purchase Contract and Pledge Agreement, the Holder of Corporate Units may effect a Collateral Substitution. From and after such Collateral Substitution, each Unit for which Pledged Treasury Securities secure the Holder's obligation under the Purchase Contract shall be referred to as a "Treasury Unit." Subject to certain exceptions described in the Purchase Contract and Pledge Agreement, a Holder may make such Collateral Substitution only in integral multiples of 20 Corporate Units for 20 Treasury Units.

Subject to and upon compliance with the provisions of, and certain exceptions described in, the Purchase Contract and Pledge Agreement, at the option of the Holder thereof, Purchase Contracts underlying Units may be settled early by effecting an Early Settlement as provided in the Purchase Contract and Pledge Agreement in integral multiples of 20 Corporate Units, or if Applicable Ownership Interests in the Treasury Portfolio have replaced the Applicable Ownership Interests in Notes as a component of the Corporate Units, in integral multiples of 80,000 Corporate Units.

Upon Early Settlement of Purchase Contracts by a Holder of the related Units, the Notes underlying the Pledged Applicable Ownership Interests in Notes or the portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of such term) underlying such Units shall be released from the Pledge as provided in the Purchase Contract and Pledge Agreement and the Holder shall be entitled to receive a number of shares of Common Stock equal to the Minimum Settlement Rate for each Purchase Contract as to which Early Settlement is effected.

Upon the occurrence of a Fundamental Change, a Holder of Corporate Units may effect Fundamental Change Early Settlement of the Purchase Contracts underlying such Corporate Units pursuant to the terms of the Purchase Contract and Pledge Agreement in integral multiples of 20 Corporate Units, or if the Applicable Ownership Interests in the Treasury Portfolio have replaced the Applicable Ownership Interests in Notes as a component of the Corporate Units, in integral multiples of 80,000 Corporate Units. Upon Fundamental Change Early Settlement of Purchase Contracts by a Holder of the related Corporate Units, the Notes underlying the Pledged Applicable Ownership Interests in Notes or the portion of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of such term) underlying such Corporate Units shall be released from the Pledge as provided in the Purchase Contract and Pledge Agreement and the Holder shall be entitled to receive a number of shares of Common Stock or other consideration specified in the Purchase Contract and Pledge Agreement on account of each Purchase Contract that forms a part of a Corporate Unit as to which Fundamental Change Early Settlement is effected equal to the sum of the applicable Settlement Rate and the applicable number of Make-Whole Shares (determined, in each case, as set forth in the Purchase Contract and Pledge Agreement).

Upon registration of transfer of this Corporate Units Certificate, the transferee shall be bound (without the necessity of any other action on the part of such transferee, except as may be required by the Purchase Contract Agent pursuant to the Purchase Contract and Pledge Agreement) under the terms of the Purchase Contract and Pledge Agreement and the Purchase Contracts evidenced hereby and the transferor shall be released from the obligations under the Purchase Contracts evidenced by this Corporate Units Certificate. The Company covenants and agrees, and the Holder, by its acceptance hereof, likewise covenants and agrees, to be bound by the provisions of this paragraph.

The Holder of this Corporate Units Certificate, by its acceptance hereof, irrevocably appoints the Purchase Contract Agent to enter into and perform under the related Purchase Contracts forming part of the Corporate Units evidenced hereby, the Purchase Contract and Pledge Agreement and the Remarketing Agreement to be entered into among the Company, the Purchase Contract Agent and the Remarketing Agent identified therein, as the same may be amended, amended and restated, supplemented or otherwise modified or replaced from time to time (the "Remarketing Agreement"), on its behalf and in its name as its attorney-in-fact and the Holder of this Corporate Units Certificate hereby authorizes the Purchase Contract Agent to take such actions on its behalf and to exercise such powers as are delegated to the Purchase Contract Agent by the terms of the Purchase Contract and Pledge Agreement or the Remarketing Agreement or under any other document or instrument referred to or provided for herein or in connection herewith; agrees to be bound by the terms and provisions of the Corporate Unit evidenced hereby (including, but not limited to, the terms and provisions of the Purchase Contract forming part of such Unit, and the Purchase Contract and Pledge Agreement) for so long as it remains a Holder of such Unit; consents to, and agrees to be bound by, the Pledge of the Applicable Ownership Interests in Notes and the underlying Notes or the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of Applicable Ownership Interests in the Treasury Portfolio), as the case may be, underlying this Corporate Units Certificate pursuant to the Purchase Contract and Pledge Agreement; and expressly withholds any consent to the assumption under Section 365 of the Bankruptcy Code or otherwise of the Purchase Contract forming part of the Corporate Unit evidenced hereby by the Company or its trustee, receiver, liquidator or any person or entity performing similar functions in the event that the Company becomes a debtor under the Bankruptcy Code or subject to other similar state or federal law providing for reorganization or liquidation. The Holder further covenants and agrees that, to the extent and in the manner provided in the Purchase Contract and Pledge Agreement, any payments with respect to the Notes underlying the Pledged Applicable Ownership Interests in Notes (other than interest payments thereon) or the Proceeds of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of the definition of Applicable Ownership Interests in the Treasury Portfolio), as the case may be, on the Purchase Contract Settlement Date in an amount equal to the aggregate Purchase Price, as described in the Purchase Contract and Pledge Agreement, for the related Purchase Contracts shall be paid by the Collateral Agent to the Company in satisfaction of such Holder's Obligations under the related Purchase Contracts. The Holder of this Corporate Units Certificate hereby accepts the authorizations, appointments, acknowledgments and other actions taken by the Purchase Contract Agent in accordance with the Purchase Contract and Pledge Agreement, the Remarketing Agreement or any other document or instrument referred to or provided for or in connection with the Purchase Contract and Pledge Agreement. Upon U.S. Bank's receipt of any initial direction, notice or instruction under the Purchase Contract and Pledge Agreement, any further instruction, notice or direction that U.S. Bank is required to make to U.S. Bank in its other capacities under the terms of the Purchase Contract and Pledge Agreement shall be deemed by the Holder of this Corporate Units Certificate as being made by U.S. Bank in such other capacities without any further action by U.S. Bank in such other capacities.

Subject to certain exceptions, the provisions of the Purchase Contract and Pledge Agreement may be amended with the consent of the Holders of not less than a majority of the Outstanding Units.

The Corporate Units and Purchase Contracts shall be governed by, and construed in accordance with, the laws of the State of New York (without regard to conflicts of laws principles thereof).

The Purchase Contracts shall not, prior to the settlement thereof, entitle the Holder to any of the rights of a holder of shares of Common Stock.

Prior to due presentment of this Certificate for registration of transfer, the Company and the Purchase Contract Agent, and any agent of the Company or the Purchase Contract Agent, may treat the Person in whose name this Corporate Units Certificate is registered as the owner of the Corporate Units evidenced hereby for the purpose of (subject to the applicable record date) any payment or distribution with respect to the Notes underlying the Applicable Ownership Interests in Notes, the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (ii) of the definition thereof) or payment of Contract Adjustment Payments and performance of the Purchase Contracts and for all other purposes whatsoever in connection with the Corporate Units, whether or not such payment, distribution, or performance shall be overdue and notwithstanding any notice to the contrary, and neither the Company or the Purchase Contract Agent, nor any agent of the Company or the Purchase Contract Agent, shall be affected by notice to the contrary. A copy of the Purchase Contract and Pledge Agreement is available for inspection at the offices of the Purchase Contract Agent.

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:	_____ (cust) Custodian _____ (minor)
	Under Uniform Gifts to Minors Act of
TENANT:	as tenants by the entireties
JT TEN:	as joint tenants with right 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 Corporate Units Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney, to transfer said Corporate Units Certificates on the books of H2O AMERICA, 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 Corporate Units Certificates in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee: _____

SETTLEMENT INSTRUCTIONS

The undersigned Holder directs the Purchase Contract Agent that a certificate (including in book entry if requested by the Holder) for shares of Common Stock deliverable upon settlement on or after the Purchase Contract Settlement Date of the Purchase Contracts underlying the number of Corporate Units evidenced by this Corporate Units Certificate be registered in the name of, and delivered, together with a check in payment for any fractional share, to, the undersigned at the address indicated below (or to the securities account designated in writing by the Holder) unless a different name and address have been indicated below. If shares are to be registered in the name of, or beneficial interests therein are to be transferred to, a Person other than the undersigned (or the Beneficial Owner of this Certificate), the undersigned (or the Beneficial Owner of this Certificate) will pay any transfer tax payable incident thereto.

Dated: _____

If shares are to be registered in the name of and delivered 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: _____
_____

_____
Social Security or other Taxpayer
Identification Number, if any

Signature: _____

Signature
Guarantee: _____

(if assigned to another person)

REGISTERED HOLDER

Please print name and address of registered Holder:

Name: _____
Address: _____
_____

ELECTION TO SETTLE EARLY/FUNDAMENTAL CHANGE EARLY SETTLEMENT

The undersigned Holder of this Corporate Units Certificate hereby irrevocably exercises the option to effect [Early Settlement] [Fundamental Change Early Settlement] in accordance with the terms of the Purchase Contract and Pledge Agreement with respect to the Purchase Contracts underlying the number of Corporate Units evidenced by this Corporate Units Certificate specified below. The option to effect [Early Settlement] [Fundamental Change Early Settlement] may be exercised only with respect to Purchase Contracts underlying Corporate Units in multiples of 20 Corporate Units or an integral multiple thereof; *provided* that if Applicable Ownership Interests in the Treasury Portfolio have replaced Applicable Ownership Interests in Notes as a component of the Corporate Units, Corporate Units Holders may only effect [Early Settlement] [Fundamental Change Early Settlement] in multiples of 80,000 Corporate Units. The undersigned Holder directs the Purchase Contract Agent that a certificate for shares (including in book entry if requested by the Holder) of Common Stock or other securities deliverable upon such [Early Settlement] [Fundamental Change Early Settlement] be registered in the name of, and delivered, together with a check in payment for any fractional share and (if applicable) any accrued and unpaid Contract Adjustment Payments (including deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon) payable upon such [Early Settlement] [Fundamental Change Early Settlement] and any Corporate Units Certificate representing any Corporate Units evidenced hereby as to which [Early Settlement] [Fundamental Change Early Settlement] of the related Purchase Contracts is not effected to, the undersigned at the address indicated below (or to the securities account designated in writing by the Holder) unless a different name and address have been indicated below. Notes underlying Pledged Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, and any other Collateral deliverable upon such [Early Settlement] [Fundamental Change Early Settlement] will be transferred in accordance with the transfer instructions set forth below. If shares are to be registered in the name of, or beneficial interests therein are to be transferred to, a Person other than the undersigned (or the Beneficial Owner of this Certificate), the undersigned (or the Beneficial Owner of this Certificate) will pay any transfer tax payable incident thereto.

Dated: _____ Signature: _____

Signature Guarantee: _____

Number of Corporate Units evidenced hereby as to which [Early Settlement] [Fundamental Change Early Settlement] of the related Purchase Contracts is being elected:

If shares are to be registered in the name of and delivered 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: _____
_____

_____
Social Security or other Taxpayer Identification Number, if any

Signature: _____

Signature Guarantee: _____

REGISTERED HOLDER

Please print name and address of registered Holder:

Name: _____
Address: _____
_____

Transfer Instructions for Notes underlying Pledged Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, transferable upon [Early Settlement] [Fundamental Change Early Settlement]:

[TO BE ATTACHED TO GLOBAL CERTIFICATES]

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL CERTIFICATE

The initial number of Corporate Units evidenced by this Global Certificate is 7,475,000. The following increases or decreases in this Global Certificate have been made:

Date	Amount of increase in number of Corporate Units evidenced by the Global Certificate	Amount of decrease in number of Corporate Units evidenced by the Global Certificate	Number of Corporate Units evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Purchase Contract Agent

EXHIBIT B

(FORM OF FACE OF TREASURY UNITS CERTIFICATE)

[For inclusion in Global Certificate only - THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE PURCHASE CONTRACT AND PLEDGE AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF CEDE & CO., AS THE NOMINEE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (THE "DEPOSITORY"), THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITORY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE PURCHASE CONTRACT AND PLEDGE AGREEMENT AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITORY TO A NOMINEE OF THE DEPOSITORY OR BY A NOMINEE OF THE DEPOSITORY TO THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

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

No. _____ CUSIP No. 40447N 205

Number of Treasury Units: _____ ISIN No. US40447N2053

Dated: _____

H2O AMERICA

Treasury Units

This Treasury Units Certificate certifies that [Cede & Co.] is the registered Holder of the number of Treasury Units set forth above [For inclusion in Global Certificates only - or such other number of Treasury Units reflected in the Schedule of Increases or Decreases in Global Certificate attached hereto], which number, taken together with the number of all other Outstanding Treasury Units and the number of all Outstanding Corporate Units, shall not exceed 7,475,000 Units. Each Treasury Unit consists of (i) a 1/20 undivided beneficial ownership interest in a Treasury Security having a principal amount at maturity equal to $1,000, subject to the Pledge of such Treasury Security by such Holder pursuant to the Purchase Contract and Pledge Agreement, and (ii) the rights and obligations of the Holder under one Purchase Contract with the Company pursuant to which (A) the Holder will agree to purchase from the Company, and the Company will agree to sell to the Holder, on the Purchase Contract Settlement Date (unless a Termination Event, an Early Settlement or a Fundamental Change Early Settlement has occurred), for the Stated Amount in Cash, a number of shares of Common Stock equal to the Settlement Rate, subject to anti-dilution adjustments, and (B) the Company will pay the Holder quarterly Contract Adjustment Payments, subject to the Company's right to defer such Contract Adjustment Payments.

All capitalized terms used herein that are defined in the Purchase Contract and Pledge Agreement (as defined on the reverse hereof) have the meanings set forth therein.

In the event of any inconsistency between the provisions of this Treasury Units Certificate and the provisions of the Purchase Contract and Pledge Agreement, the provisions of the Purchase Contract and Pledge Agreement shall govern and control.

Pursuant to the Purchase Contract and Pledge Agreement, the Treasury Securities underlying each Treasury Unit evidenced hereby have been pledged to the Collateral Agent, for the benefit of the Company, to secure the Obligations of the Holder under the Purchase Contract comprising part of such Treasury Unit.

Each Purchase Contract evidenced hereby obligates the Holder of this Treasury Units Certificate to purchase, and the Company to sell, on the Purchase Contract Settlement Date, at a Purchase Price equal to the Stated Amount, a number of shares of Common Stock equal to the Settlement Rate, unless on or prior to the Purchase Contract Settlement Date there shall have occurred a Termination Event, an Early Settlement or a Fundamental Change Early Settlement with respect to such Purchase Contract, all as provided in the Purchase Contract and Pledge Agreement. The Purchase Price for the shares of Common Stock purchased pursuant to each Purchase Contract evidenced hereby, if not paid earlier, shall be paid on the Purchase Contract Settlement Date by application of the proceeds from the Treasury Securities at maturity pledged to secure the Holder's Obligations under such Purchase Contract.

Each Purchase Contract evidenced hereby obligates each Holder and Beneficial Owner to agree for U.S. federal, state and local income tax purposes (unless otherwise required by any taxing authority) to (i) treat each Beneficial Owner of a Treasury Unit as the owner, separately, of each of the applicable Purchase Contract and the applicable interests in the Treasury Securities and (ii) in all events, not take any position for U.S. federal, state or local income tax purposes that is inconsistent with or contrary to the above covenant.

The Company shall pay, on each Contract Adjustment Payment Date, in respect of each Purchase Contract forming part of a Treasury Unit evidenced hereby, an amount (the "Contract Adjustment Payments") equal to 2.450% per year of the Stated Amount, computed on the basis of a 360-day year consisting of twelve 30-day months. Such Contract Adjustment Payments shall be payable to the Person in whose name this Treasury Units Certificate is registered at the close of business on the Record Date for such Contract Adjustment Payment Date. The Company may, at its option, defer such Contract Adjustment Payments, as described in the Purchase Contract and Pledge Agreement. The Contract Adjustment Payments are unsecured and will rank subordinate and junior in right of payment to all of the Company's existing and future senior indebtedness.

If the book-entry system for the Treasury Units has been terminated, the Contract Adjustment Payments will be payable by check mailed to the address of the Person entitled thereto at such Person's address as it appears on the Security Register or, if such Person so requests and designates an account in writing to the Purchase Contract Agent by 5:00 p.m., New York City time, at least five Business Days prior to the relevant Payment Date, by wire transfer to such account.

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.

Unless the certificate of authentication hereon has been executed by the Purchase Contract Agent by manual or electronic signature, this Treasury Units Certificate shall not be entitled to any benefit under the Purchase Contract and Pledge Agreement or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company and the Holder specified above have caused this instrument to be duly executed.

Attested:

By: _____
Name:
Title:

H2O AMERICA

By: _____
Name:
Title:

HOLDER SPECIFIED ABOVE (as to obligations of such Holder under the Purchase Contracts)

By: U.S. Bank Trust Company, National Association, not individually but solely as attorney-in-fact of such Holder

By: _____
Authorized Signatory

CERTIFICATE OF AUTHENTICATION OF
PURCHASE CONTRACT AGENT

This is one of the Treasury Units Certificates referred to in the within mentioned Purchase Contract and Pledge Agreement.

By: U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as
Purchase Contract Agent

By: _____
Authorized Signatory

(REVERSE OF TREASURY UNITS CERTIFICATE)

Each Purchase Contract evidenced hereby is governed by a Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (as may be supplemented from time to time, the "Purchase Contract and Pledge Agreement") among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the Holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary, to which Purchase Contract and Pledge Agreement and supplemental agreements thereto reference is hereby made 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 Treasury Units Certificates are, and are to be, executed and delivered.

Each Purchase Contract evidenced hereby obligates the Holder of this Treasury Units Certificate to purchase, and the Company to sell, on the Purchase Contract Settlement Date at a price equal to the Stated Amount, a number of shares of Common Stock equal to the Settlement Rate, unless an Early Settlement, a Fundamental Change Early Settlement or a Termination Event with respect to the Unit of which such Purchase Contract is a part shall have occurred. The Settlement Rate is subject to adjustment as described in the Purchase Contract and Pledge Agreement.

No fractional shares of Common Stock will be issued upon settlement of any Purchase Contracts, as provided in Section 5.09 of the Purchase Contract and Pledge Agreement.

Each Purchase Contract evidenced hereby that is settled through Early Settlement or Fundamental Change Early Settlement shall obligate the Holder of the related Treasury Units to purchase at the Purchase Price, and the Company to sell, a number of shares of Common Stock equal to the Minimum Settlement Rate, in the case of an Early Settlement, or the Settlement Rate plus the applicable number of Make-Whole Shares (determined, in each case, as set forth in the Purchase Contract and Pledge Agreement), in the case of a Fundamental Change Early Settlement.

In accordance with the terms of the Purchase Contract and Pledge Agreement, the Holder of this Treasury Unit Certificate shall pay the Purchase Price for the shares of Common Stock purchased pursuant to each Purchase Contract evidenced hereby either by effecting an Early Settlement or, if applicable, a Fundamental Change Early Settlement of each such Purchase Contract or by applying the proceeds of the Pledged Treasury Securities underlying such Holder's Treasury Unit equal to the Purchase Price for such Purchase Contract to the purchase of the Common Stock. A Holder of Treasury Units who does not, in the manner and at the times provided in the Purchase Contract and Pledge Agreement, make an effective Early Settlement or Fundamental Change Early Settlement, shall pay the Purchase Price, as described in the Purchase Contract and Pledge Agreement, for the shares of Common Stock to be issued under the related Purchase Contract from the proceeds of the Pledged Treasury Securities.

The Company shall not be obligated to issue any shares of Common Stock in respect of a Purchase Contract or deliver any certificates therefor to the Holder unless it shall have received payment of the aggregate Purchase Price, as described in the Purchase Contract and Pledge Agreement, for the shares of Common Stock to be purchased thereunder in the manner set forth in the Purchase Contract and Pledge Agreement.

The Purchase Contracts and all obligations and rights of the Company and the Holders thereunder, including, without limitation, the rights of the Holders to receive and the obligation of the Company to pay any Contract Adjustment Payments, shall immediately and automatically terminate, without the necessity of any notice or action by any Holder, the Purchase Contract Agent or the Company, if, on or prior to the Purchase Contract Settlement Date, a Termination Event shall have occurred. Upon the occurrence of a Termination Event, the Company shall give written notice to the Purchase Contract Agent, the Collateral Agent and the Holders, at their addresses as they appear in the Security Register. Upon the occurrence of a Termination Event, the Collateral Agent shall release the Treasury Securities underlying each Treasury Unit, and all other Collateral, from the Pledge. A Treasury Unit shall thereafter represent the right to receive the Treasury Security underlying such Treasury Unit, in accordance with the terms of the Purchase Contract and Pledge Agreement.

The Treasury Units Certificates are issuable only in registered form and only in denominations of a single Treasury Unit and any integral multiple thereof. The transfer of any Treasury Units Certificate will be registered and Treasury Units Certificates may be exchanged as provided in the Purchase Contract and Pledge Agreement. A Holder who elects to substitute Notes for Treasury Securities, thereby recreating Corporate Units, shall be responsible for any fees or expenses payable in connection therewith. Except as provided in the Purchase Contract and Pledge Agreement, such Treasury Unit shall not be separable into its constituent parts, and the rights and obligations of the Holder of such Treasury Unit in respect of the interest in the Treasury Security and the Purchase Contract constituting such Treasury Unit may be acquired, and may be transferred and exchanged, only as a Treasury Unit.

Subject to, and in compliance with, the terms and conditions set forth in the Purchase Contract and Pledge Agreement, the Holder of Treasury Units may effect a Collateral Substitution. From and after such Collateral Substitution, each Unit for which Pledged Applicable Ownership Interests in Notes secure the Holder's obligation under the Purchase Contract shall be referred to as a "Corporate Unit." Subject to certain exceptions described in the Purchase Contract and Pledge Agreement, a Holder may make such Collateral Substitution only in integral multiples of 20 Treasury Units for 20 Corporate Units.

Subject to and upon compliance with the provisions of, and certain exceptions described in, the Purchase Contract and Pledge Agreement, at the option of the Holder thereof, Purchase Contracts underlying Units may be settled early by effecting an Early Settlement as provided in the Purchase Contract and Pledge Agreement in integral multiples of 20 Treasury Units.

Upon Early Settlement of Purchase Contracts by a Holder of the related Units, the Pledged Treasury Securities underlying such Units shall be released from the Pledge as provided in the Purchase Contract and Pledge Agreement and the Holder shall be entitled to receive a number of shares of Common Stock equal to the Minimum Settlement Rate for each Purchase Contract as to which Early Settlement is effected.

Upon the occurrence of a Fundamental Change, a Holder of Treasury Units may effect Fundamental Change Early Settlement of the Purchase Contracts underlying such Treasury Units pursuant to the terms of the Purchase Contract and Pledge Agreement in integral multiples of 20 Treasury Units. Upon Fundamental Change Early Settlement of Purchase Contracts by a Holder of the related Treasury Units, the Pledged Treasury Securities underlying such Treasury Units shall be released from the Pledge as provided in the Purchase Contract and Pledge Agreement and the Holder shall be entitled to receive a number of shares of Common Stock or other consideration specified in the Purchase Contract and Pledge Agreement on account of each Purchase Contract that forms a part of a Treasury Unit as to which Fundamental Change Early Settlement is effected equal to the sum of the applicable Settlement Rate and the applicable number of Make-Whole Shares (determined, in each case, as set forth in the Purchase Contract and Pledge Agreement).

Upon registration of transfer of this Treasury Units Certificate, the transferee shall be bound (without the necessity of any other action on the part of such transferee, except as may be required by the Purchase Contract Agent pursuant to the Purchase Contract and Pledge Agreement) under the terms of the Purchase Contract and Pledge Agreement and the Purchase Contracts evidenced hereby and the transferor shall be released from the obligations under the Purchase Contracts evidenced by this Treasury Units Certificate. The Company covenants and agrees, and the Holder, by its acceptance hereof, likewise covenants and agrees, to be bound by the provisions of this paragraph.

The Holder of this Treasury Units Certificate, by its acceptance hereof, irrevocably appoints the Purchase Contract Agent to enter into and perform under the related Purchase Contracts forming part of the Treasury Units evidenced hereby, the Purchase Contract and Pledge Agreement and the Remarketing Agreement to be entered into among the Company, the Purchase Contract Agent and the Remarketing Agent identified therein, as the same may be amended, amended and restated, supplemented or otherwise modified or replaced from time to time (the "Remarketing Agreement"), on its behalf and in its name as its attorney-in-fact and the Holder of this Treasury Units Certificate hereby authorizes the Purchase Contract Agent to take such actions on its behalf and to exercise such powers as are delegated to the Purchase Contract Agent by the terms of the Purchase Contract and Pledge Agreement or the Remarketing Agreement or under any other document or instrument referred to or provided for herein or in connection herewith; agrees to be bound by the terms and provisions of the Treasury Unit evidenced hereby (including, but not limited to, the terms and provisions of the Purchase Contract forming part of such Unit, and the Purchase Contract and Pledge Agreement) for so long as it remains a Holder of such Unit; consents to, and agrees to be bound by, the Pledge of the Pledged Treasury Securities underlying this Treasury Units Certificate pursuant to the Purchase Contract and Pledge Agreement; and expressly withholds any consent to the assumption under Section 365 of the Bankruptcy Code or otherwise of the Purchase Contract forming part of the Treasury Unit evidenced hereby by the Company or its trustee, receiver, liquidator or any person or entity performing similar functions in the event that the Company becomes a debtor under the Bankruptcy Code or subject to other similar state or federal law providing for reorganization or liquidation. The Holder further covenants and agrees, that, to the extent and in the manner provided in the Purchase Contract and Pledge Agreement, payments in respect to the aggregate principal amount at maturity of the Pledged Treasury Securities on the Purchase Contract Settlement Date equal to the aggregate Purchase Price, as described in the Purchase Contract and Pledge Agreement, for the related Purchase Contracts shall be paid by the Collateral Agent to the Company in satisfaction of such Holder's Obligations under such Purchase Contracts. The Holder of this Treasury Units Certificate hereby accepts the authorizations, appointments, acknowledgments and other actions taken by the Purchase Contract Agent in accordance with the Purchase Contract and Pledge Agreement, the Remarketing Agreement or any other document or instrument referred to or provided for or in connection with the Purchase Contract and Pledge Agreement. Upon U.S. Bank's receipt of any initial direction, notice or instruction under the Purchase Contract and Pledge Agreement, any further instruction, notice or direction that U.S. Bank is required to make to U.S. Bank in its other capacities under the terms of the Purchase Contract and Pledge Agreement shall be deemed by the Holder of this Treasury Units Certificate as being made by U.S. Bank in such other capacities without any further action by U.S. Bank in such other capacities.

Subject to certain exceptions, the provisions of the Purchase Contract and Pledge Agreement may be amended with the consent of the Holders of not less than a majority of the Outstanding Units.

The Purchase Contracts shall be governed by, and construed in accordance with, the laws of the State of New York (without regard to conflicts of laws principles thereof).

The Purchase Contracts shall not, prior to the settlement thereof, entitle the Holder to any of the rights of a holder of shares of Common Stock.

Prior to due presentment of this Certificate for registration of transfer, the Company and the Purchase Contract Agent, and any agent of the Company or the Purchase Contract Agent, may treat the Person in whose name this Treasury Units Certificate is registered as the owner of the Treasury Units evidenced hereby for the purpose of (subject to the applicable record date) any payment of Contract Adjustment Payments and performance of the Purchase Contracts and for all other purposes whatsoever in connection with the Treasury Units, whether or not such payment, distribution, or performance shall be overdue and notwithstanding any notice to the contrary, and neither the Company or the Purchase Contract Agent, nor any agent of the Company or the Purchase Contract Agent, shall be affected by notice to the contrary. A copy of the Purchase Contract and Pledge Agreement is available for inspection at the offices of the Purchase Contract Agent.

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 right 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 Treasury Units Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney, to transfer said Treasury Units Certificates on the books of H2O America, 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 Treasury Units Certificates in every particular, without alteration or enlargement or any change whatsoever.

Signature
Guarantee: _____

SETTLEMENT INSTRUCTIONS

The undersigned Holder directs the Purchase Contract Agent that a certificate (including in book entry if requested by the Holder) for shares of Common Stock deliverable upon settlement on or after the Purchase Contract Settlement Date of the Purchase Contracts underlying the number of Treasury Units evidenced by this Treasury Units Certificate be registered in the name of, and delivered, together with a check in payment for any fractional share, to, the undersigned at the address indicated below (or to the securities account designated in writing by the Holder) unless a different name and address have been indicated below. If shares are to be registered in the name of, or beneficial interests therein are to be transferred to, a Person other than the undersigned (or the Beneficial Owner of this Certificate), the undersigned (or the Beneficial Owner of this Certificate) will pay any transfer tax payable incident thereto.

Dated:

(if assigned to another person)
REGISTERED HOLDER

If shares are to be registered in the name of and delivered 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: _____

_____
Social Security or other Taxpayer Identification Number, if any

Signature: _____

Signature Guarantee: _____

Please print name and address of registered Holder:

Name: _____

Address: _____

ELECTION TO SETTLE EARLY/FUNDAMENTAL CHANGE EARLY SETTLEMENT

The undersigned Holder of this Treasury Units Certificate hereby irrevocably exercises the option to effect [Early Settlement] [Fundamental Change Early Settlement] in accordance with the terms of the Purchase Contract and Pledge Agreement with respect to the Purchase Contracts underlying the number of Treasury Units evidenced by this Treasury Units Certificate specified below. The option to effect [Early Settlement] [Fundamental Change Early Settlement] may be exercised only with respect to Purchase Contracts underlying Treasury Units in multiples of 20 Treasury Units or an integral multiple thereof. The undersigned Holder directs the Purchase Contract Agent that a certificate for shares (including in book entry if requested by the Holder) of Common Stock or other securities deliverable upon such [Early Settlement] [Fundamental Change Early Settlement] be registered in the name of, and delivered, together with a check in payment for any fractional share and (if applicable) any accrued and unpaid Contract Adjustment Payments (including deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon) payable upon such [Early Settlement] [Fundamental Change Early Settlement] and any Treasury Units Certificate representing any Treasury Units evidenced hereby as to which [Early Settlement] [Fundamental Change Early Settlement] of the related Purchase Contracts is not effected to, the undersigned at the address indicated below (or to the securities account designated in writing by the Holder) unless a different name and address have been indicated below. Pledged Treasury Securities deliverable upon such [Early Settlement] [Fundamental Change Early Settlement] will be transferred in accordance with the transfer instructions set forth below. If shares are to be registered in the name of, or beneficial interests therein are to be transferred to, a Person other than the undersigned (or the Beneficial Owner of this Certificate), the undersigned (or the Beneficial Owner of this Certificate) will pay any transfer tax payable incident thereto.

Dated: Signature:

Signature
Guarantee:

Number of Treasury Units evidenced hereby as to which [Early Settlement] [Fundamental Change Early Settlement] of the related Purchase Contracts is being elected:

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

REGISTERED HOLDER

Please print name and address of registered Holder:

Name: Name:

Address:

Address:

Social Security or other Taxpayer Identification Number, if any

Signature:

Signature
Guarantee:

Transfer Instructions for Pledged Treasury Securities transferable upon [Early Settlement] [Fundamental Change Early Settlement]:

[TO BE ATTACHED TO GLOBAL CERTIFICATES]

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL CERTIFICATE

The initial number of Treasury Units evidenced by this Global Certificate is 0. The following increases or decreases in this Global Certificate have been made:

Date	Amount of increase in number of Treasury Units evidenced by the Global Certificate	Amount of decrease in number of Treasury Units evidenced by the Global Certificate	Number of Treasury Units evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Purchase Contract Agent

EXHIBIT C

INSTRUCTION TO PURCHASE CONTRACT AGENT FROM HOLDER

(To Create Treasury Units or Corporate Units)

[U.S. Bank Trust Company, National Association, as Purchase Contract Agent
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Global Corporate Trust]

Re: [Corporate Units] [Treasury Units] of H2O America, a Delaware corporation (the "Company").

The undersigned Holder hereby notifies you that it has deposited with U.S. Bank Trust Company, National Association, as Collateral Agent, for credit to the Collateral Account, $[ ] principal amount at maturity of [Notes] [Treasury Securities] in exchange for an equal principal amount at maturity of [Pledged Treasury Securities] [Notes underlying Pledged Applicable Ownership Interests in Notes] held in the Collateral Account, in accordance with the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Agreement"; unless otherwise defined herein, terms defined in the Agreement are used herein as defined therein), among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units (as defined in the Agreement) and Treasury Units (as defined in the Agreement) from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. The undersigned Holder has paid all applicable fees and expenses relating to such exchange. Pursuant to Section [3.13, relating to creation of Treasury Units,][3.14, relating to recreation of Corporate Units,] of the Agreement, the undersigned Holder hereby instructs you to instruct the Collateral Agent to release to you on behalf of the undersigned Holder and in accordance with Applicable Procedures (as defined in the Agreement), the [Notes underlying Pledged Applicable Ownership Interests in Notes] [Pledged Treasury Securities] related to such [Corporate Units] [Treasury Units], free and clear of the Collateral Agent's security interests, for further credit to [_____] by [_____].

Dated:	Signature:
	Medallion Signature Guarantee:

Please print name and address of Registered Holder:

Name	Social Security or other Taxpayer Identification Number, if any
Address	

EXHIBIT D

**NOTICE FROM PURCHASE CONTRACT AGENT
TO HOLDERS UPON TERMINATION EVENT**

(Transfer of Collateral upon Occurrence of a Termination Event)

[HOLDER]

Attention:

Re: [Corporate Units] [Treasury Units] of H2O America, a Delaware corporation (the "Company").

Please refer to the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Purchase Contract and Pledge Agreement"; unless otherwise defined herein, terms defined in the Purchase Contract and Pledge Agreement are used herein as defined therein), among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary.

We hereby notify you that we have been notified by the Company pursuant to Section 5.07 of the Purchase Contract and Pledge Agreement or by Holders of not less than 25% of the aggregate Stated Amount of the Units pursuant to Section 3.15(b) of the Purchase Contract and Pledge Agreement that a Termination Event has occurred and that [the Notes underlying the Pledged Applicable Ownership Interests in Notes] [the Applicable Ownership Interests in the Treasury Portfolio] [the Treasury Securities] comprising a portion of your ownership interest in [Corporate Units] [Treasury Units] have been released and are being held by us for your account pending receipt of transfer instructions with respect to such [Notes] [Applicable Ownership Interests in the Treasury Portfolio] [Pledged Treasury Securities] (the "Released Securities").

Pursuant to Section 3.15 of the Purchase Contract and Pledge Agreement, we hereby request written transfer instructions with respect to the Released Securities. Upon receipt of your instructions and upon transfer to us of your [Corporate Units] [Treasury Units] effected through book entry or by delivery to us of your [Corporate Units Certificate] [Treasury Units Certificate], we shall transfer the Released Securities by book-entry transfer or other appropriate procedures, in accordance with your instructions. In the event you fail to effect such transfer or delivery, the Released Securities and any distributions thereon shall be held in our name, or a nominee in trust for your benefit, until such time as such [Corporate Units] [Treasury Units] are transferred or your [Corporate Units Certificate] [Treasury Units Certificate] is surrendered or satisfactory evidence is provided that such [Corporate Units Certificate] [Treasury Units Certificate] has been destroyed, lost or stolen, together with any indemnification that we or the Company may require.

Dated: _____

By: U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as
Purchase Contract Agent

By: _____

EXHIBIT E

NOTICE TO SETTLE WITH CASH

[U.S. Bank Trust Company, National Association, as Purchase Contract Agent
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Global Corporate Trust

Re: Corporate Units of H2O America, a Delaware corporation (the "Company").

The undersigned Holder hereby irrevocably notifies you in accordance with Section 5.03 of the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Purchase Contract and Pledge Agreement"; unless otherwise defined herein, terms defined in the Purchase Contract and Pledge Agreement are used herein as defined therein), among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary, that such Holder has elected, prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Final Remarketing Period, to pay to or upon the order of the Securities Intermediary for deposit in the Collateral Account, prior to 4:00 p.m., New York City time, on the first Business Day immediately preceding the first day of the Final Remarketing Period (in Cash by certified or cashier's check or wire transfer, in immediately available funds) $[ ] as the Purchase Price for the shares of Common Stock issuable to such Holder by the Company with respect to [ ] Purchase Contracts on the Purchase Contract Settlement Date. The undersigned Holder hereby instructs you to notify promptly the Collateral Agent of the undersigned Holder's election to make such Cash Settlement with respect to the Purchase Contracts related to such Holder's Corporate Units.

Dated:

Signature:

Medallion Signature
Guarantee:

Please print name and address of Registered Holder:

Name of DTC Participant:

Social Security or other Taxpayer Identification Number, if any:

DTC Participant code:

Phone:

Email:

Wire instructions for payment of:

Bank Name:
Bank Address:
Wire ABA:

ACH ABA:

For the account of:
Account No.:
Amount:

Any written notices should be sent to:

Name(s):
Address:
Email:

U.S. Federal Tax Information

If you, a DTC participant, do not have a W-9 (or other appropriate tax form) on file with the Purchase Contract Agent, you must attach a completed W-9 form (or other appropriate tax form), a copy of which is available at: http://www.irs.gov.

EXHIBIT F

INSTRUCTION
FROM PURCHASE CONTRACT AGENT
TO COLLATERAL AGENT

(Creation of Treasury Units)

[U.S. Bank Trust Company, National Association, as Collateral Agent
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Global Corporate Trust]

Re: Corporate Units of H2O America (the "Company").

Please refer to the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Agreement"), among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. Capitalized terms used herein but not defined shall have the meanings set forth in the Agreement.

We hereby notify you in accordance with Section 3.13 of the Agreement that the holder of securities named below (the "Holder") has elected to substitute $[ ] aggregate principal amount at maturity of Treasury Securities and/or security entitlements with respect thereto in exchange for an equal aggregate principal amount of Notes underlying Pledged Applicable Ownership Interests in Notes relating to [ ] Corporate Units and has delivered to the undersigned a notice stating that the Holder has Transferred such Treasury Securities and/or security entitlements with respect thereto to the Collateral Agent, for credit to the Collateral Account.

We hereby request that you instruct the Securities Intermediary, upon confirmation that such Treasury Securities and/or security entitlements thereto have been credited to the Collateral Account, to Transfer to the undersigned an equal aggregate principal amount at maturity of Notes underlying Pledged Applicable Ownership Interests in Notes or security entitlements with respect thereto related to [ ] Corporate Units of such Holder in accordance with Section 3.13 of the Agreement.

Dated: _____

By: U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact of the Holders from time to time of the Units

_____

Name:
Title:

Please print name and address of Holder electing to substitute Treasury Securities and/or security entitlements with respect thereto for the Notes underlying Pledged Applicable Ownership Interests in Notes:

_____ _____

Name Social Security or other Taxpayer Identification Number, if any

_____

Address

EXHIBIT G

INSTRUCTION
FROM COLLATERAL AGENT
TO SECURITIES INTERMEDIARY

(Creation of Treasury Units)

[U.S. Bank Trust Company, National Association, as Securities Intermediary
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Global Corporate Trust]

Re: Corporate Units of H2O America (the "Company").

Reference is hereby made to the securities account of U.S. Bank Trust Company, National Association, as Collateral Agent, maintained on the books of the Securities Intermediary and designated "H2O America Collateral Account" (the "Collateral Account").

Please also refer to the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Agreement"), among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. Capitalized terms used herein but not defined shall have the meanings set forth in the Agreement.

When you have confirmed that $[ ] aggregate principal amount at maturity of Treasury Securities and/or security entitlements with respect thereto has been credited to the Collateral Account by or for the benefit of [ ], as Holder of [ ] Corporate Units (the "Holder"), you are hereby instructed to release from the Collateral Account an equal aggregate principal amount of Notes underlying Pledged Applicable Ownership Interests in Notes or security entitlements with respect thereto relating to [ ] Corporate Units of the Holder by Transfer to the Purchase Contract Agent.

Dated:

By: U.S. Bank Trust Company, National Association, as Collateral Agent

Name:
Title:

EXHIBIT H

INSTRUCTION
FROM PURCHASE CONTRACT AGENT
TO COLLATERAL AGENT

(Re-creation of Corporate Units)

[U.S. Bank Trust Company, National Association, as Collateral Agent
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Global Corporate Trust]

Re: Treasury Units of H2O America (the "Company").

Please refer to the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Agreement"), among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. Capitalized terms used herein but not defined shall have the meanings set forth in the Agreement.

We hereby notify you in accordance with Section 3.14 of the Agreement that the holder of securities named below (the "Holder") has elected to substitute $[ ] principal amount of Notes relating to [ ] Corporate Units in exchange for $[ ] principal amount at maturity of Pledged Treasury Securities relating to [ ] Treasury Units and has delivered to the undersigned a notice stating that the Holder has Transferred such Notes and/or security entitlements thereto to the Collateral Agent, for credit to the Collateral Account.

We hereby request that you instruct the Securities Intermediary, upon confirmation that such Notes and/or security entitlements thereto have been credited to the Collateral Account, to release to the undersigned $[ ] aggregate principal amount at maturity of Treasury Securities related to [ ] Treasury Units of such Holder in accordance with Section 3.14 of the Agreement.

Dated:

By: U.S. Bank Trust Company, National Association, as Purchase Contract Agent

Name:
Title:

Please print name and address of Holder electing to substitute Notes or security entitlements with respect thereto for Pledged Treasury Securities:

Name

Social Security or other Taxpayer Identification Number, if any

Address

EXHIBIT I

INSTRUCTION
FROM COLLATERAL AGENT TO
SECURITIES INTERMEDIARY

(Re-creation of Corporate Units)

[U.S. Bank Trust Company, National Association, as Securities Intermediary
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Global Corporate Trust]

Re: Treasury Units of H2O America (the "Company").

Reference is hereby made to the securities account of U.S. Bank Trust Company, National Association, as Collateral Agent, maintained on the books of the Securities Intermediary and designated "H2O America Collateral Account" (the "Collateral Account").

Please also refer to the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Agreement"), among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. Capitalized terms used herein but not defined shall have the meanings set forth in the Agreement.

When you have confirmed that $[ ] aggregate principal amount of Notes or security entitlements with respect thereto has been credited to the Collateral Account by or for the benefit of [ ], as Holder of [ ] Treasury Units (the "Holder"), you are hereby instructed to release from the Collateral Account $[ ] aggregate principal amount at maturity of Treasury Securities by Transfer to the Purchase Contract Agent.

Dated:

By: U.S. Bank Trust Company, National Association, as Purchase Contract Agent

Name:
Title:

EXHIBIT J

NOTICE TO SETTLE WITH CASH FROM PURCHASE CONTRACT AGENT TO COLLATERAL AGENT

(Cash Settlement Amounts)

[U.S. Bank Trust Company, National Association, as Collateral Agent
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Global Corporate Trust]

Re: Corporate Units of H2O America (the "Company")

Please refer to the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Agreement"), among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. Unless otherwise defined herein, terms defined in the Agreement are used herein as defined therein.

In accordance with Section 5.03(a)(iv) of the Agreement, we hereby notify you that as of 4:00 p.m., New York City time, on the first Business Day immediately preceding the first day of the Final Remarketing Period, we have received (i) notification from the Securities Intermediary that it has received for deposit in the Collateral Account $[ ] in immediately available funds paid in an aggregate amount equal to the Purchase Price due to the Company on the Purchase Contract Settlement Date with respect to [ ] Corporate Units and (ii) based on the funds received set forth in clause (i) above, an aggregate principal amount of $[ ] of Notes underlying Pledged Applicable Ownership Interests in Notes are to be offered for purchase in each Remarketing during the Final Remarketing Period.

Dated:

By: U.S. Bank Trust Company, National Association, as Purchase Contract Agent

Name:
Title:

Please print name and address of Holder electing a Cash Settlement

Name:	DTC Participant #
Address	Social Security or other Taxpayer Identification Number, if any
City/State/Zip	

EXHIBIT K

INSTRUCTION TO CUSTODIAL AGENT REGARDING REMARKETING

[U.S. Bank Trust Company, National Association, as Custodial Agent
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Global Corporate Trust]

Re: Remarketable Senior Notes due November 1, 2031 of H2O America, a Delaware Corporation (the "Company").

The undersigned hereby notifies you in accordance with Section 5.02(d) of the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Agreement"), among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary, that the undersigned elects to deliver $[ ] aggregate principal amount of Separate Notes for delivery to the Remarketing Agent prior to a Remarketing, other than during a Blackout Period, for remarketing pursuant to Section 5.02(d) of the Agreement. The undersigned will, upon written request of the Remarketing Agent, execute and deliver any additional documents deemed by the Remarketing Agent or by the Company to be necessary or desirable to complete the sale, assignment and transfer of the Separate Notes tendered hereby. Capitalized terms used herein but not defined shall have the meanings set forth in the Agreement.

The undersigned hereby instructs you to deliver such Separate Notes to or upon the order of the Remarketing Agent against payment of the Proceeds of a Successful Remarketing attributable to such Separate Notes from the Remarketing Agent, and to deliver such Proceeds to the undersigned in accordance with the instructions indicated herein under "Payment Instructions" or the Depository in accordance with the Applicable Procedures of the Depository if such Remarketing was effected through The Depository Trust Company ("DTC"). The undersigned hereby instructs you, in the event of a Failed Remarketing to deliver such Separate Notes to the person(s) and the address(es) indicated herein under "B. Delivery Instructions."

With this notice, the undersigned hereby (i) represents and warrants that the undersigned has full power and authority to surrender, sell, assign and transfer the Separate Notes surrendered hereby and that the undersigned is the record owner of any Separate Notes surrendered herewith in physical form or a participant in DTC and the Beneficial Owner of any Separate Notes surrendered herewith by book-entry transfer to your account at DTC, (ii) agrees to be bound by the terms and conditions of Section 5.02(a) or (b), as applicable, of the Agreement and (iii) acknowledges and agrees that after 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Applicable Remarketing Period, such election shall become an irrevocable election to have such Separate Notes remarketed in each Remarketing during the Applicable Remarketing Period, and that the Separate Notes surrendered herewith will only be returned in the event of a Failed Remarketing.

Date:

Name

Address

By:
Name:
Title:

Medallion Signature
Guarantee:

Social Security or other Taxpayer Identification Number, if any

A. PAYMENT INSTRUCTIONS

Proceeds of a Successful Remarketing attributable to the Separate Notes delivered hereunder should be paid by the following wire instructions, or if unavailable by check in the name of the person(s) set forth below and mailed to the address set forth below.

[Wire Instructions]

Name(s):

(Please Print)

Address:

(Please Print)

(Zip Code)

(Taxpayer Identification or Social Security Number)

B. DELIVERY INSTRUCTIONS

In the event of a Failed Remarketing, Notes which are in physical form should be delivered to the person(s) set forth below and mailed to the address set forth below.

Name(s): _____

(Please Print)

Address: _____

(Please Print)

_____

(Zip Code)

_____

(Taxpayer Identification or Social Security Number)

In the event of a Failed Remarketing, Notes which are in book-entry form should be credited to the account at DTC to the person(s) set forth below.

DTC Account Number: _____

Name of Account Party: _____

EXHIBIT L

INSTRUCTION TO CUSTODIAL AGENT REGARDING
WITHDRAWAL FROM REMARKETING

[U.S. Bank Trust Company, National Association, as Custodial Agent
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Global Corporate Trust]

Re: Remarketable Senior Notes due November 1, 2031 of H2O America, a Delaware Corporation (the "Company").

The undersigned hereby notifies you in accordance with Section 5.02(d) of the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Agreement"), among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary, that the undersigned elects to withdraw, other than during a Blackout Period, the $[ ] aggregate principal amount of Separate Notes delivered to you for Remarketing pursuant to Section 5.02(d) of the Agreement. The undersigned hereby instructs you to return such Separate Notes to the person(s) and the address(es) indicated herein under "A. Delivery Instructions."

With this notice, the undersigned hereby agrees to be bound by the terms and conditions of Section 5.02(d) of the Agreement. Capitalized terms used herein but not defined shall have the meanings set forth in the Agreement.

_____
Date:

_____
Name

_____
Address

_____
By:
Name:
Title:

_____
Medallion Signature
Guarantee:

_____
Social Security or other Taxpayer Identification Number, if any

A. DELIVERY INSTRUCTIONS

In the event of a withdrawal of Separate Notes from a Remarketing, Separate Notes which are in physical form should be delivered to the person(s) set forth below and mailed to the address set forth below.

Name(s): _____

(Please Print)

Address: _____

(Please Print)

_____

(Zip Code)

_____

(Taxpayer Identification or Social Security Number)

In the event of a withdrawal of Separate Notes from a Remarketing, Separate Notes which are in book-entry form should be credited to the account at The Depository Trust Company to the person(s) set forth below.

DTC Account Number: _____

Name of Account Party: _____

EXHIBIT M

NOTICE TO SETTLE WITH CASH AFTER FAILED FINAL REMARKETING

[U.S. Bank Trust Company, National Association, as Purchase Contract Agent
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Global Corporate Trust]

Re: Corporate Units of H2O America, a Delaware corporation (the "Company")

The undersigned Holder hereby irrevocably notifies you in accordance with Section 5.02(b)(ix) of the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Purchase Contract and Pledge Agreement"), among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary, that such Holder has elected to pay to or upon the order of the Securities Intermediary for deposit in the Collateral Account, on or prior to 4:00 p.m., New York City time, on the Business Day immediately preceding the Purchase Contract Settlement Date (in Cash by certified or cashier's check or wire transfer, in immediately available funds), $[ ] as the Purchase Price for the shares of Common Stock issuable to such Holder by the Company with respect to [ ] Purchase Contracts on the Purchase Contract Settlement Date. The undersigned Holder hereby instructs you to notify promptly the Collateral Agent of the undersigned Holder's election to settle the Purchase Contracts related to such Holder's Corporate Units with separate Cash. Capitalized terms used herein but not defined shall have the meanings set forth in the Purchase Contract and Pledge Agreement.

Date: _____

Signature: _____

Medallion
Signature
Guarantee: _____

Please print name and address of Registered Holder:

_____

_____

_____

_____

EXHIBIT N

NOTICE
FROM PURCHASE CONTRACT AGENT
TO COLLATERAL AGENT

(Settlement with Separate Cash)

[U.S. Bank Trust Company, National Association, as Collateral Agent
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Global Corporate Trust]

Re: Corporate Units of H2O America, a Delaware corporation (the "Company")

Please refer to the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Agreement"), among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. Capitalized terms used herein but not defined shall have the meanings set forth in the Agreement.

We hereby notify you in accordance with the last paragraph of Section 5.02(b)(ix) of the Agreement that the holder of Corporate Units named below (the "Holder") has elected to settle the [ ] Purchase Contracts related to its Pledged Applicable Ownership Interests in Notes with $[ ] of separate Cash prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the Purchase Contract Settlement Date (in Cash by certified or cashier's check or wire transfer, in immediately available funds payable to or upon the order of the Securities Intermediary) and has delivered to the undersigned a notice to that effect.

We hereby request that you, upon confirmation that the Purchase Price has been paid by the Holder to the Securities Intermediary for credit to the Collateral Account in accordance with Section 5.02(b)(ix) of the Agreement in lieu of exercise of such Holder's Put Right, give us notice of the receipt of such payment and, thereafter, you are instructed to, or instructed to cause the Securities Intermediary to, (A) deposit the separate Cash received in the Collateral Account and, if applicable, invest such separate Cash in Permitted Investments consistent with the instructions of the Company as provided in Section 5.03(a)(v) of the Agreement with respect to Cash Settlement (as specified by Section 5.02(b)(ix)), (B) promptly release from the Pledge the Notes underlying the Applicable Ownership Interests in Notes related to the Corporate Units as to which such Holder has paid such separate Cash; and (C) promptly Transfer all such Notes to us for distribution to such Holder in accordance with the terms provided for in the Agreement, in each case free and clear of the Pledge created by the Agreement.

Dated: _____

U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact of the Holders from time to time of the Units

By: _____
Name: _____
Title: _____

Please print name and address of Holder electing a Cash Settlement

Name _____

Address _____

_____

_____

Social Security or other Taxpayer Identification Number, if any _____

EXHIBIT O

NOTICE OF SETTLEMENT WITH SEPARATE CASH FROM SECURITIES INTERMEDIARY TO PURCHASE CONTRACT AGENT AND COLLATERAL AGENT

(Settlement with Separate Cash)

[U.S. Bank Trust Company, National Association, as Purchase Contract Agent and Collateral Agent
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Global Corporate Trust]

Re: Corporate Units of H2O America (the "Company")

Please refer to the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Agreement"), among the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. Unless otherwise defined herein, terms defined in the Agreement are used herein as defined therein.

In accordance with the last paragraph of Section 5.02(b)(ix) of the Agreement, we hereby notify you that as of 4:00 p.m., New York City time, on the Business Day immediately preceding the Purchase Contract Settlement Date, (i) we have received from [ ] $[ ] in immediately available funds paid in an aggregate amount equal to the Purchase Price due to the Company on the Purchase Contract Settlement Date with respect to [ ] Corporate Units and (ii) based on the funds received set forth in clause (i) above, an aggregate principal amount of $[ ] of Notes underlying related Pledged Applicable Ownership Interests in Notes are to be released from the Pledge and Transferred to you.

U.S. Bank Trust Company, National Association, as Securities Intermediary

Dated: _____

By:

Name: _____

Title: _____

EXHIBIT P

FORM OF REMARKETING AGREEMENT

[●]

[U.S. Bank Trust Company, National Association, as Purchase Contract Agent
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Global Corporate Trust]

Ladies and Gentlemen:

This Agreement is dated as of [●], 20[●] (the "**Agreement**") by and among H2O America, a Delaware corporation (the "**Company**"), the remarketing agent[s] named in Schedule A hereto (the "**Remarketing Agent**")[1], and U.S. Bank Trust Company, National Association, as Purchase Contract Agent (the "**Purchase Contract Agent**") and as attorney-in-fact of the Holders of Purchase Contracts, relating to the appointment of such entit[y] [ies] named in Schedule A hereto to serve as Remarketing Agent with respect to the Remarketing of the Notes (as defined below).

The Company has also entered into: (a) a Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "**Purchase Contract and Pledge Agreement**"), among the Company, U.S. Bank Trust Company, National Association, as Purchase Contract Agent and attorney-in-fact of the Holders of the Purchase Contracts, and U.S. Bank Trust Company, National Association, as Collateral Agent, Custodial Agent and Securities Intermediary, and (b) an Underwriting Agreement, dated October 29, 2026 (the "**Underwriting Agreement**"), among the Company and the underwriters named therein, each related to the Company's Corporate Units (the "**Corporate Units**").

On November 3, 2026, the Company issued an aggregate of 7,475,000 Corporate Units, each of which consist of a stock purchase contract issued by the Company and a 1/20 undivided beneficial ownership interest in $1,000 principal amount of the Company's Remarketable Senior Notes due November 1, 2031 (the "**Notes**"). The Notes were issued pursuant to a Senior Note Indenture, dated as of November 3, 2026 (the "**Base Indenture**"), by and between the Company and U.S. Bank Trust Company, National Association, as trustee (the "**Trustee**"), as heretofore amended and supplement and as further supplemented by a first supplemental indenture, dated as of November 3, 2026, to the Base Indenture relating to the Notes (the "**Supplemental Indenture**" and the Base Indenture, as supplemented by the Supplemental Indenture, the "**Indenture**"), between the Company and the Trustee.

The Notes that form part of the Corporate Units are pledged pursuant to the Purchase Contract and Pledge Agreement to secure Corporate Units Holders' Obligations under the related Purchase Contracts on the Purchase Contract Settlement Date.

[1] Insert one or more Remarketing Agents to be designated by the Company.

The terms and conditions under which the Remarketing will occur are as provided for in the Indenture and the Purchase Contract and Pledge Agreement and as provided for herein.

Section 1. DEFINITIONS.

(a) Capitalized terms used and not defined in this Agreement shall have the meanings set forth in the Purchase Contract and Pledge Agreement.

(b) As used in this Agreement, the following terms have the following meanings:

"**Agreement**" has the meaning specified in the first paragraph of this Agreement.

"**Applicable Time**" has the meaning specified in Section 3(c) of this Agreement.

"**Base Indenture**" has the meaning specified in the third paragraph of this Agreement.

"**Commencement Date**" has the meaning specified in Section 3 of this Agreement.

"**Commission**" means the United States Securities and Exchange Commission.

"**Company**" has the meaning specified in the first paragraph of this Agreement.

"**Disclosure Package**" means the Registration Statement, if any, or any amendment thereof and any Preliminary Prospectus, if any, taken together with any Permitted Free Writing Prospectus, if any, used in connection with a Successful Remarketing at the Applicable Time.

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

"**GAAP**" has the meaning specified in Section 3(h) of this Agreement.

"**Indenture**" has the meaning specified in the third paragraph of this Agreement.

"**Issuer Free Writing Prospectus**" means an issuer free writing prospectus, if any, as defined in Rule 433 under the Securities Act, relating to the Remarketed Notes.

"**Material Adverse Change**" has the meaning specified in Section 6(b) of this Agreement.

"**Notes**" has the meaning specified in the third paragraph of this Agreement.

"**OFAC**" has the meaning specified in Section 3(ii) of this Agreement.

"**Operative Documents**" means, collectively, this Agreement, the Indenture, the Remarketed Notes and the Purchase Contract and Pledge Agreement (including the Purchase Contracts).

"**Permitted Free Writing Prospectus**" has the meaning specified in Section 5(e) of this Agreement.

"**Preliminary Prospectus**" means a preliminary prospectus, if any, relating to the Remarketed Notes included in the Registration Statement, including the documents incorporated by reference therein as of the date of such Preliminary Prospectus.

"**Private Placement Marketing Materials**" has the meaning specified in Section 3(f) of this Agreement.

"**Prospectus**" means the prospectus, if any, relating to the Remarketed Notes, in the form in which first filed, or transmitted for filing, with the Commission after the effective date of the Registration Statement pursuant to Rule 424(b) under the Securities Act, including the documents incorporated by reference therein as of the date of such Prospectus; and any reference to any amendment or supplement to such Prospectus shall be deemed to refer to and include any documents filed after the date of such Prospectus, under the Exchange Act, and incorporated by reference in such Prospectus.

"**Purchase Contract Agent**" has the meaning specified in the first paragraph of this Agreement.

"**Purchase Contract and Pledge Agreement**" has the meaning specified in the second paragraph of this Agreement.

"**Registration Covenants**" has the meaning specified in Section 5(a) of this Agreement.

"**Registration Statement**" means a registration statement, if any, under the Securities Act prepared by the Company covering, inter alia, the Remarketing of the Remarketed Notes pursuant to Section 5(a) of this Agreement, including all exhibits thereto and the documents incorporated by reference in the Preliminary Prospectus or the Prospectus, as applicable, and any post-effective amendments thereto.

"**Remarketed Notes**" means, with respect to all Remarketings during any Applicable Remarketing Period, the aggregate principal amount of Notes underlying the Pledged Applicable Ownership Interests in Notes and the Separate Notes, if any, subject to Remarketing as identified to the Remarketing Agent by the Purchase Contract Agent and the Custodial Agent, respectively, in the case of an Optional Remarketing, by 4:00 p.m., New York City time, on the Business Day immediately prior to the first day of the applicable Optional Remarketing Period, or in the case of a Final Remarketing, promptly after 4:00 p.m., New York City time, on the Business Day immediately prior to the first day of the Final Remarketing Period in accordance with the Purchase Contract and Pledge Agreement and shall include (i) the Notes underlying the Pledged Applicable Ownership Interests in Notes of the Holders of Corporate Units who have not effected a Collateral Substitution, an Early Settlement or a Fundamental Change Early Settlement in accordance with the Purchase Contract and Pledge Agreement and, in the case of a Final Remarketing, who have not notified the Purchase Contract Agent prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Final Remarketing Period of their intention to effect a Cash Settlement of the related Purchase Contracts pursuant to the terms of the Purchase Contract and Pledge Agreement or who have so notified the Purchase Contract Agent but failed to make the required Cash payment prior to 4:00 p.m., New York City time, on the first Business Day immediately preceding the Final Remarketing Period and (ii) the Separate Notes of the holders of Separate Notes, if any, who have elected to have their Separate Notes remarketed in any such Remarketing pursuant to the terms of the Purchase Contract and Pledge Agreement.

"**Remarketing Agent**" has the meaning specified in the first paragraph of this Agreement.

"**Remarketing Disclosure Documents**" means (x) if the Registration Covenants are applicable, the Registration Statement, the Disclosure Package and the Prospectus and (y) in connection with any Remarketing conducted in accordance with Rule 144A under the Securities Act or any other exemption from registration thereunder, the Private Placement Marketing Materials and any final offering memorandum or similar offering document relating to the Remarketed Notes, in each case including the documents incorporated or deemed incorporated by reference therein.

"**Remarketing Fee**" has the meaning specified in Section 4 of this Agreement.

"**Remarketing Materials**" means the Preliminary Prospectus, the Prospectus and/or any Issuer Free Writing Prospectus or, in the case of a Remarketing conducted in accordance with Rule 144A under the Securities Act or any other exemption from registration thereunder, the Private Placement Marketing Materials and any final offering memorandum or similar offering document, in each case furnished by the Company to the Remarketing Agent for distribution to investors in connection with the Remarketing.

"**Representation Date**" has the meaning specified in Section 3 of this Agreement.

"**Reset Rate**" has the meaning specified in Section 2(d) of this Agreement.

"**Rules and Regulations**" has the meaning specified in Section 3(p) of this Agreement.

"**Sanctions**" has the meaning specified in Section 3(ii) of this Agreement.

"**Sanctioned Country**" has the meaning specified in Section 3(ii) of this Agreement.

"**Securities**" has the meaning specified in Section 10 of this Agreement.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Supplement**" has the meaning specified in Section 3(b) of this Agreement.

"**Supplemental Indenture**" has the meaning specified in the third paragraph of this Agreement.

"**Transaction Documents**" means this Agreement, the Purchase Contract and Pledge Agreement, the Corporate Units, the Notes and the Indenture, in each case as amended or supplemented from time to time.

"**Trust Indenture Act**" has the meaning specified in Section 3(m) of this Agreement.

"**Trustee**" has the meaning specified in the third paragraph of this Agreement.

"**Underwriting Agreement**" has the meaning specified in the second paragraph of this Agreement.

Section 2. APPOINTMENT AND OBLIGATIONS OF THE REMARKETING AGENT.

(a) The Company hereby appoints [●] as the Remarketing Agent, and, subject to the terms and conditions set forth herein, [each of] [●] hereby accepts appointment as the Remarketing Agent, for the purpose of (i) remarketing the Remarketed Notes on behalf of the holders thereof, (ii) determining, in consultation with the Company, in the manner provided for herein and in the Purchase Contract and Pledge Agreement and the Supplemental Indenture, the Reset Rate for the Notes, and (iii) performing such other duties as are assigned to the Remarketing Agent in the Transaction Documents.

(b) Unless a Termination Event has occurred prior to such date, if the Company elects to conduct an Optional Remarketing during the applicable Optional Remarketing Period selected by the Company pursuant to the Purchase Contract and Pledge Agreement, the Remarketing Agent shall use its commercially reasonable efforts to remarket the Remarketed Notes at the applicable Remarketing Price. For the avoidance of doubt, the Company shall determine in its sole discretion if and when to attempt an Optional Remarketing, as the Company may commence or postpone or cancel an Optional Remarketing in its absolute and sole discretion. In the case of an Optional Remarketing, on any Remarketing Date, the Remarketing Agent shall notify in writing the Company, the Collateral Agent, the Quotation Agent and the Purchase Contract Agent of the amount and issue of the U.S. Treasury securities (or principal or interest strips thereof) that will constitute the Treasury Portfolio, which will be selected by the Remarketing Agent in its sole reasonable discretion in accordance with the Purchase Contract and Pledge Agreement. The Company will cause the Quotation Agent to notify the Remarketing Agent of the Treasury Portfolio Purchase Price no later than 4:00 p.m., New York City time, on such Remarketing Date. If the Remarketing Agent is also acting as Quotation Agent, the Quotation Agent shall be entitled to all rights, protections and privileges granted herein to the Remarketing Agent.

(c) If there is no Successful Optional Remarketing during the applicable Optional Remarketing Period or no Optional Remarketing occurs on any Optional Remarketing Date, if any, and unless a Termination Event has occurred prior to such date, on each Remarketing Date in the Final Remarketing Period, the Remarketing Agent shall use its commercially reasonable efforts to remarket the Remarketed Notes at the applicable Remarketing Price. It is understood and agreed that the Remarketing on any Remarketing Date in the Final Remarketing Period will be considered successful if the resulting proceeds are at least equal to the applicable Remarketing Price. The Company has the right to postpone the Final Remarketing in the Company's sole and absolute discretion on any day prior to the last three Business Days of the Final Remarketing Period.

(d) In connection with a Remarketing, the Remarketing Agent shall determine, in consultation with the Company, the fixed rate per annum, rounded to the nearest one-thousandth (0.001) of one percent per annum, that the Remarketed Notes should bear (such fixed rate, the "**Reset Rate**") in order for the Remarketed Notes to have an aggregate market value equal to at least the applicable Remarketing Price and that in the reasonable discretion of the Remarketing Agent will enable it to remarket all of the Remarketed Notes at no less than the applicable Remarketing Price in such Remarketing; provided that such Reset Rate shall not exceed the maximum interest rate permitted by applicable law; provided further that, in connection with such Remarketing, it is understood and agreed that in order to successfully remarket the Notes, the Remarketing Agent, in consultation with the Company, may reset the interest rate applicable to the Remarketed Notes (either upward or downward) in accordance with Article 7 of the Supplemental Indenture in order to produce the required price in the Remarketing.

(e) If, by 4:00 p.m., New York City time, on the applicable Remarketing Date, (i) the Remarketing Agent is unable to Remarket all of the Remarketed Notes, at a price not less than the applicable Remarketing Price pursuant to the terms and conditions hereof or (ii) the Remarketing did not occur on such Remarketing Date because one of the conditions set forth in Section 6 of this Agreement was not satisfied, the Remarketing Agent shall advise by telephone (and promptly deliver a notice in writing thereafter to) the Depository, the Purchase Contract Agent, the Collateral Agent and the Company. Whether or not there has been a Failed Remarketing will be determined in the sole reasonable discretion of the Remarketing Agent. In the event of a Failed Remarketing, the applicable interest rate on the Notes will not be reset and will continue to be the Securities Rate (as defined in the Supplemental Indenture).

(f) In the event of a Successful Remarketing, by approximately 4:30 p.m., New York City time, on the applicable Remarketing Date, the Remarketing Agent shall advise, by telephone (and promptly deliver a notice in writing thereafter):

(i) the Depository, the Purchase Contract Agent, the Trustee, the Collateral Agent, the Custodial Agent and the Company (and promptly deliver a notice in writing to such Persons thereafter) of the Reset Rate with respect to the Notes and the aggregate principal amount of Remarketed Notes sold in such Remarketing;

(ii) each purchaser (or the Depository Participant thereof) of Remarketed Notes of the Reset Rate and the aggregate principal amount of Remarketed Notes such purchaser is to purchase;

(iii) each such purchaser (if other than a Depository Participant) to give instructions to its Depository Participant to pay the purchase price on the Remarketing Settlement Date in same day funds against delivery of the Remarketed Notes purchased through the facilities of the Depository; and (iv) each such purchaser (or Depository Participant thereof) that the Remarketed Notes will not be delivered until the Remarketing Settlement Date and (if applicable) that if such purchaser wishes to trade the Remarketed Notes that it has purchased prior to the Business Day preceding the Remarketing Settlement Date, such purchaser will have to specify an alternative settlement cycle at the time of any such trade to prevent failed settlement.

The Remarketing Agent shall also, if required by the Securities Act, deliver, in conformity with the requirements of the Securities Act, to each purchaser a Prospectus in connection with the Remarketing.

(g) The proceeds from a Successful Remarketing (i) with respect to the Notes underlying the Applicable Ownership Interests in Notes that are components of the Corporate Units and (ii) with respect to the Separate Notes, in each case, shall be applied in accordance with Section 5.02 of the Purchase Contract and Pledge Agreement.

(h) It is understood and agreed that the Remarketing Agent shall not have any obligation whatsoever to purchase any Remarketed Notes, whether in the Remarketing or otherwise, and shall in no way be obligated to provide funds to make payment upon surrender of Remarketed Notes for Remarketing or to otherwise expend or risk its own funds or to incur or be exposed to financial liability in the performance of its duties under this Agreement. Neither the Company nor the Remarketing Agent shall be obligated in any case to provide funds to make payment upon surrender of the Remarketed Notes for Remarketing.

Section 3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants, (i) on and as of each date any Remarketing Materials or Private Placement Marketing Materials, as applicable, with respect to any Remarketing Period is first distributed in connection with the Remarketing (each, a "**Commencement Date**"), (ii) on and as of each date any amendment to any Remarketing Materials, or Private Placement Marketing Materials, as applicable, is first distributed, (iii) on and as of each Remarketing Date and (iv) on and as of the Remarketing Settlement Date (in each case, a "**Representation Date**"), that:

(a) If the Registration Covenants are applicable, one or more Registration Statements in respect of the Remarketed Notes have been filed with the Commission and have become effective, and no notice of objection of the Commission to the use of any 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.

(b) If the Registration Covenants are applicable, no order suspending the effectiveness of the Registration Statement has been issued by the Commission, and, to the knowledge of the Company, no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the Remarketing 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 (including any supplement reflecting the terms of the Remarketed Notes and the terms of the offering thereof, in the form in which it is first filed with the Commission pursuant to Rule 424 of the Securities Act (the "Supplement")) and as of the Remarketing Settlement Date, 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 (i) any statements or omissions made in reliance upon and in conformity with information furnished to the Company in writing by the Remarketing Agent, directly or indirectly, expressly for use therein, (ii) any information set forth in the Registration Statement or the Prospectus under the captions "Description of the Remarketable Senior Notes ─ Book-Entry Issuance ─ The Depository Trust Company" and "Description of the Remarketable Senior Notes ─ Global Clearance and Settlement Procedures" or (iii) the part of the Registration Statement that constitutes the Trustee's Statement of Eligibility under the Trust Indenture Act. The foregoing representations and warranties are given on the basis that any statement contained in any document incorporated by reference into the Registration Statement shall be deemed not to be contained in the Registration Statement if the statement has been modified or superseded by any statement in a subsequently filed document incorporated by reference into the Registration Statement or in the Registration Statement or in any amendment or supplement thereto.

(c) If the Registration Covenants are applicable, the Disclosure Package as of the time immediately prior to the time of the first sale of Remarketed Notes to investors during the Applicable Remarketing Period (the "**Applicable Time**") did not, and as of the Remarketing Settlement Date 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 (i) any statements or omissions made in reliance upon and in conformity with information furnished to the Company in writing by the Remarketing Agent, directly or indirectly, expressly for use in the Disclosure Package, (ii) any information set forth in the Registration Statement or the Prospectus under the captions "Description of the Remarketable Senior Notes ─ Book-Entry Issuance ─ The Depository Trust Company" and "Description of the Remarketable Senior Notes ─ Global Clearance and Settlement Procedures" or (iii) the part of the Registration Statement that constitutes the Trustee's Statement of Eligibility under the Trust Indenture Act. The foregoing representation and warranty is given on the basis that any statement contained in any document incorporated by reference into the Disclosure Package shall be deemed not to be contained in the Disclosure Package if the statement has been modified or superseded by any statement in a subsequently filed document incorporated by reference into the Disclosure Package or in the Registration Statement or in any amendment or supplement thereto.

(d) If the Registration Covenants are applicable, each Permitted Free Writing Prospectus, if any, complies in all material respects with the Securities Act, has been or will be (within the time period specified in Rule 433 under the Securities Act) 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 Disclosure Package, including any document incorporated by reference therein and any Supplement deemed to be a part thereof, that has not been superseded or modified.

(e) If the Registration Covenants are applicable, if the Registration Statement is an "automatic shelf registration statement" (as defined in Rule 405 under the Securities Act), at the time of filing the Registration Statement and the most recent post-effective amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act, at the earliest time thereafter that the Company or any offering participant made a bona fide offer in reliance on the exemption of Rule 163 under the Securities Act, the Company was not an "ineligible issuer," and was a well-known seasoned issuer, in each case as defined in Rule 405 under the Securities Act.

(f) In connection with any Remarketing conducted in accordance with Rule 144A of the Securities Act or any other exemption from registration thereunder, (x) any preliminary offering memorandum or any communication, document or material relating to the Remarketed Notes that would, if the Remarketing were conducted as a public offering pursuant to a registration statement filed under the Securities Act, constitute a "free writing prospectus," as defined in Rule 405 under the Securities Act (including the documents incorporated or deemed incorporated by reference in any such document or materials) (the "**Private Placement Marketing Materials**"), (y) any final offering memorandum or similar offering document relating to the Remarketed Notes and (z) any further amendments or supplements to any of the foregoing do not and will not, as of their respective dates of distribution to investors (and as amended or supplemented, as of such date) and as of the Remarketing Settlement Date, contain an 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 under which they were made, not misleading. The foregoing sentence does not apply to (i) any statements in or omissions from any such document based upon and in conformity with written information furnished to the Company by the Remarketing Agent, directly or indirectly, expressly for use therein or (ii) any information set forth in the Private Placement Marketing Materials relating to book-entry issuance or clearance and settlement procedures relating to the Remarketed Notes.

(g) The documents incorporated or deemed incorporated by reference in the Remarketing Disclosure Documents, 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 or deemed incorporated by reference in any Remarketing Disclosure Document, 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.

(h) The financial statements (including the related notes thereto) of the Company and its consolidated subsidiaries included or incorporated by reference in the Remarketing Disclosure Documents 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 of the dates indicated and the results of their operations 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 supporting schedules included or incorporated by reference in the Remarketing Disclosure Documents 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 Remarketing Disclosure Documents 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; all disclosures included or incorporated by reference in the Remarketing Disclosure Documents regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the 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 any pro forma financial information and the related notes thereto included or incorporated by reference in the Remarketing Disclosure Documents have been prepared in accordance with the applicable requirements of the Securities Act and the Exchange Act, as applicable, and the assumptions underlying such pro forma financial information are reasonable and are set forth in the Remarketing Disclosure Documents.

(i) Since the date of the most recent financial statements of the Company included or incorporated by reference in the Remarketing Disclosure Documents and except as disclosed in the Remarketing Disclosure Documents, (i) there has not been any material change in the capital stock of the Company or any of its subsidiaries, taken as a whole (other than (A) the issuance of shares of common stock of the Company under any employee stock purchase plan, (B) the issuance and withholding of shares of common stock of the Company in connection with restricted stock units or deferred restricted stock units described as outstanding in the Remarketing Disclosure Documents, and (C) the grant of purchase rights under any employee stock purchase plan and awards under existing equity plans of the Company, including the Company's long-term incentive plans, which plans are described in the Remarketing Disclosure Documents), material change in short-term debt or long-term debt of the Company or any of its subsidiaries taken as a whole (other than borrowings and the repayment of borrowings in the ordinary course of business) or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock (other than regularly scheduled cash dividends in amounts that are consistent with past practice), or any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, properties, management, financial position, stockholders' equity, results of operations or prospects of the Company and its subsidiaries, taken as a whole; (ii) neither the Company nor any of its subsidiaries has entered into any transaction or agreement (whether or not in the ordinary course of business) that is material to the Company and its subsidiaries taken as a whole, or incurred any liability or obligation, direct or contingent, that is material to the Company and its subsidiaries, taken as a whole; and (iii) neither the Company nor any of its subsidiaries has sustained any loss or interference with its business that is material to the Company and its 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.

(j) The Company and each of its subsidiaries have been duly organized and are validly existing and in good standing under the laws of their respective jurisdictions of organization, are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a material adverse effect on the business, properties, management, financial position, stockholders' equity, results of operations or prospects of the Company and its subsidiaries taken as a whole or on the performance by the Company of its obligations under the Operative Documents (a "**Material Adverse Effect**"). The Company does not own or control, directly or indirectly, any corporation, association or other entity required to be listed in an exhibit to an Annual Report on Form 10-K pursuant to Item 601(b)(21) of Regulation S-K of the Securities Act other than the subsidiaries listed in Exhibit 21.1 of the Annual Report on Form 10-K of the Company for the year ended December 31, 202[•] filed with the Commission.

(k) The Company has an authorized capitalization as of [•], 202[•] as set forth in the Remarketing Disclosure Documents; 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.

(l) The Company has full right, power and authority to execute and deliver this Agreement, the Indenture and the Remarketed Notes and to perform its obligations under each such document, and all action required to be taken for the due and proper authorization, execution and delivery by it of this Agreement, the Indenture and the Remarketed Notes, and the consummation by the Company of the transactions contemplated thereby has been duly and validly taken.

(m) The Indenture has been duly authorized by the Company and on the Remarketing Settlement Date, will have been duly executed and delivered by the Company, and, assuming due authorization, execution and delivery of the Indenture by the Trustee, the Indenture will, on the Remarketing Settlement Date, constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by (1) bankruptcy, insolvency, reorganization, receivership, liquidation, fraudulent conveyance, moratorium or other similar laws affecting creditors' rights generally or (2) general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity) (the "**Enforceability Exceptions**"); the Indenture will conform in all material respects to all statements relating thereto contained in the Remarketing Disclosure Documents; and, on the Remarketing Settlement Date, if the Registration Covenants are applicable, the Indenture will have been duly qualified under the Trust Indenture Act of 1939, as amended (the "**Trust Indenture Act**").

(n) Neither the Company nor any of its subsidiaries is (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any property or asset of the Company or any of its subsidiaries is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(o) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated in this Agreement, the Indenture or the Remarketed Notes and compliance by the Company with its obligations hereunder and thereunder will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, result in the termination, modification or acceleration of, or result in the creation or imposition of any lien, charge or encumbrance upon any property, right or asset of the Company or any of its subsidiaries pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any property, right or asset of the Company or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the charter or by-laws or similar organizational documents of the Company or (iii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority having jurisdiction over the Company or any of its subsidiaries, except, in the case of clauses (i) and (iii) above, for any such conflict, breach, violation, default, lien, charge or encumbrance that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(p) No consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Company of this Agreement or the transactions contemplated by this Agreement, the Indenture or the Remarketed Notes, except (i) such as may be required under the Securities Act or the rules and regulations thereunder (the "Rules and Regulations"), (ii) as have already been obtained or will have been obtained prior to the Remarketing Settlement Date, (iii) 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 Remarketed Notes by the Remarketing Agent, and (iv) the qualification of the Indenture under the Trust Indenture Act.

(q) Except as described in the Remarketing Disclosure Documents, there are no legal, governmental or regulatory investigations, actions, demands, claims, suits, arbitrations, inquiries or proceedings ("Actions") pending to which the Company or any of its subsidiaries is or may be a party or to which any property of the Company or any of its subsidiaries is or may be the subject as to which there is a reasonable possibility of an adverse determination and that, individually or in the aggregate, if determined adversely to the Company or any of its subsidiaries, would reasonably be expected to have a Material Adverse Effect; to the knowledge of the Company, no such Actions are threatened or contemplated by any governmental or regulatory authority or threatened by others; and (i) there are no current or pending Actions that are required under the Securities Act to be described in the Remarketing Disclosure Documents that are not so described and (ii) there are no contracts or other documents that are required under the Securities Act to be filed as exhibits to the Registration Statement, if any, or to be described in the Remarketing Disclosure Documents, that are not so filed or described.

(r) Deloitte & Touche LLP or such other public accounting firm, who have certified certain financial statements of the Company and its subsidiaries, 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.

(s) The Company and its subsidiaries have good and marketable title in fee simple (in the case of real property) to, or have valid rights to lease or otherwise use, all items of real and personal property that are material to the business of the Company and its subsidiaries, in each case free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and its subsidiaries, or (ii) would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(t) (i) The Company and its subsidiaries own or have the right to use all patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, domain names and other source indicators, copyrights and copyrightable works, know-how, trade secrets, systems, procedures, proprietary or confidential information and all other worldwide intellectual property, industrial property and proprietary rights (collectively, "**Intellectual Property**") used in or held for use in the conduct of their respective businesses, except where the failure to own or have such rights would not, individually or in the aggregate, result in a Material Adverse Effect; (ii) the Company's and its subsidiaries' conduct of their business does not infringe, misappropriate or otherwise violate any Intellectual Property of any person, except where such infringement would not, individually or in the aggregate, result in a Material Adverse Effect; (iii) the Company and its subsidiaries have not received any written notice of any claim relating to Intellectual Property; and (iv) to the knowledge of the Company, the Intellectual Property of the Company and its subsidiaries is not being infringed, misappropriated or otherwise violated by any person.

(u) No relationship, direct or indirect, exists between or among the Company or any of its subsidiaries, on the one hand, and the directors, officers, stockholders, customers, suppliers or other affiliates of the Company or any of its subsidiaries, on the other, that is required by the Securities Act to be described in the Remarketing Disclosure Documents and that is not so described.

(v) The Company is not and, after giving effect to the offering and sale of the Remarketed Notes and the application of the net proceeds thereof as contemplated by this Agreement, will not be required to register as an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.

(w) The Company and its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date of this Agreement or have requested extensions thereof and have paid all taxes due, except (i) (with respect to payments) as currently being contested in good faith and for which reserves required by GAAP have been created in the financial statements of the Company or (ii) where the failure to so file or pay would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect; and other than tax deficiencies which the Company or any of its subsidiaries is contesting in good faith and for which the Company or any of its subsidiaries has provided adequate reserves, or as otherwise disclosed in the Remarketing Disclosure Documents, there is no tax deficiency that has been asserted in writing against the Company or any of its subsidiaries or any of their respective properties or assets that would reasonably be expected to have a Material Adverse Effect.

(x) The Company and its subsidiaries possess all licenses, sub-licenses, certificates, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as described in the Remarketing Disclosure Documents, except where the failure to possess or make the same would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect; and except as described in the Remarketing Disclosure Documents, neither the Company nor any of its subsidiaries has received notice of any revocation or modification of any such license, sub-license, certificate, permit or authorization or has any reason to believe that any such license, sub-license, certificate, permit or authorization will not be renewed in the ordinary course, which revocation, modification or non-renewal would be reasonably expected to have a Material Adverse Effect.

(y) No labor disturbance by or dispute with employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is contemplated or threatened, and the Company is not aware of any existing or imminent labor disturbance by, or dispute with, the employees of any of its or its subsidiaries' principal suppliers or contractors, except as would not have a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received any notice of cancellation or termination with respect to any collective bargaining agreement to which it is a party.

(z) (i) The Company and its subsidiaries (x) are in compliance with all, and have not violated any, applicable federal, state, local and foreign laws (including common law), rules, regulations, requirements, decisions, judgments, decrees, orders and other legally enforceable requirements relating to pollution, hazardous or toxic substances or wastes, pollutants or contaminants, or the protection of the environment, natural resources or human health or safety (collectively, "**Environmental Laws**"); (y) have received and are in compliance with all, and have not violated any, permits, licenses, certificates or other authorizations or approvals required of them under any Environmental Laws to conduct their respective businesses; and (z) have not received notice of any actual or potential liability or obligation under or relating to, or any actual or potential violation of, any Environmental Laws, including for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, and have no knowledge of any event or condition that would reasonably be expected to result in any such notice, and (ii) there are no costs or liabilities associated with Environmental Laws of or relating to the Company or its subsidiaries, except in the case of each of (i) and (ii) above, for any such matter as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (iii) except as described in the Remarketing Disclosure Documents, (x) there is no proceeding that is pending, or that is known to be contemplated, against the Company or any of its subsidiaries under any Environmental Laws in which a governmental entity is also a party, other than such proceeding regarding which it is reasonably believed no monetary sanctions of $300,000 or more will be imposed, (y) the Company and its subsidiaries are not aware of any facts or issues regarding compliance with Environmental Laws, or liabilities or other obligations under Environmental Laws or concerning hazardous or toxic substances or wastes, pollutants or contaminants that could reasonably be expected to have a material effect on the capital expenditures, earnings or competitive position of the Company and its subsidiaries, and (z) none of the Company or its subsidiaries anticipates material capital expenditures relating to any Environmental Laws.

(aa) (i) Each employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), for which the Company or any member of its "Controlled Group" (defined as any entity, whether or not incorporated, that is under common control with the Company within the meaning of Section 4001(a)(14) of ERISA or any entity that would be regarded as a single employer with the Company under Section 414(b),(c),(m) or (o) of the Internal Revenue Code of 1986, as amended (the "**Code**")) would have any liability (each, a "**Plan**") has been maintained in compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan, excluding transactions effected pursuant to a statutory or administrative exemption; (iii) for each Plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no Plan has failed (whether or not waived), or is reasonably expected to fail, to satisfy the minimum funding standards (within the meaning of Section 302 of ERISA or Section 412 of the Code) applicable to such Plan; (iv) no Plan is, or is reasonably expected to be, in "at risk status" (within the meaning of Section 303(i) of ERISA) and no Plan that is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA is in "endangered status" or "critical status" (within the meaning of Sections 304 and 305 of ERISA); (v) the fair market value of the assets of each Plan exceeds the present value of all benefits accrued under such Plan (determined based on those assumptions used to fund such Plan); (vi) no "reportable event" (within the meaning of Section 4043(c) of ERISA and the regulations promulgated thereunder) has occurred; (vii) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified, and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification; (viii) neither the Company nor any member of the Controlled Group has incurred, nor reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation, in the ordinary course and without default) in respect of a Plan (including a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA); and (ix) none of the following events has occurred or is reasonably likely to occur: (A) a material increase in the aggregate amount of contributions required to be made to all Plans by the Company or its Controlled Group affiliates in the current fiscal year of the Company and its Controlled Group affiliates compared to the amount of such contributions made in the Company's and its Controlled Group affiliates' most recently completed fiscal year; or (B) a material increase in the Company and its subsidiaries' "accumulated post-retirement benefit obligations" (within the meaning of Accounting Standards Codification Topic 715-60) compared to the amount of such obligations in the Company and its subsidiaries' most recently completed fiscal year, except in each case with respect to the events or conditions set forth in (i) through (ix) hereof, as would not, individually or in the aggregate, have a Material Adverse Effect.

(bb) The Company and its subsidiaries maintain an effective system of "disclosure controls and procedures" (as defined in Rule 13a-15(e) of the Exchange Act) that complies with the requirements of the Exchange Act and that has been designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure. The Company and its subsidiaries have carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act.

(cc) The Company and its subsidiaries maintain systems of "internal control over financial reporting" (as defined in Rule 13a-15(f) of the Exchange Act) that comply with the requirements of the Exchange Act and have been designed by, or under the supervision of, their respective principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. The Company and its subsidiaries maintain 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, except as disclosed in the Remarketing Disclosure Documents, there are no material weaknesses in the Company's internal controls. 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.

(dd) The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Remarketing Disclosure Documents 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.

(ee) The Company and its subsidiaries have insurance covering their respective properties, operations, personnel and businesses, including business interruption insurance, which insurance is in amounts and insures against such losses and risks as are adequate to protect their respective businesses; and neither the Company nor any of its subsidiaries has (i) received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance or (ii) any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business.

(ff) 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 Company's knowledge, 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, to the Company's knowledge, 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, 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. To the Company's knowledge, the Company and its subsidiaries have taken all necessary actions, to the extent required to have been taken as of the date hereof, to prepare to comply with all other applicable laws and regulations with respect to Personal Data that have been announced as of the date hereof as becoming effective within 12 months after the date hereof, and for which any non-compliance with same would be reasonably likely to create a material liability.

(gg) Neither the Company nor any of its subsidiaries, nor any director or officer of the Company or any of its subsidiaries 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 has (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; 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 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 all applicable anti-bribery and anti-corruption laws.

(hh) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering statutes of all jurisdictions where the Company or any of its subsidiaries conducts business, the 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 knowledge of the Company, threatened.

(ii) Neither the Company nor any of its subsidiaries, 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 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, the European Union, the United Kingdom or other relevant sanctions authority (collectively, "**Sanctions**"), nor is the Company or any of its subsidiaries located, organized or resident in a country or territory that is the target of Sanctions, including, without limitation, Crimea and the non-government controlled areas of the Zaporizhzhia and Kherson Regions of Ukraine, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, Cuba, Iran and North Korea (each, a "**Sanctioned Country**"); and the Company will not directly or indirectly use any proceeds of the Remarketing received by the Company, 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 Country or (iii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as agent, remarketing agent, advisor, investor or otherwise) of Sanctions. For the past five years, the Company and its subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

(jj) Except as disclosed in the Remarketing Disclosure Documents or otherwise would not have a Material Adverse Effect, no subsidiary of the Company is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject (other than the Company's and its subsidiaries' existing debt agreements), from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock or similar ownership interest, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's properties or assets to the Company or any other subsidiary of the Company.

(kk) 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 the Remarketing Agent for a brokerage commission, finder's fee or like payment in connection with the Remarketing of the Remarketed Notes.

(ll) Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any of their affiliates has taken or will take, directly or indirectly, any action designed to or that would reasonably be expected to cause or result in any stabilization or manipulation of the price of the Remarketed Notes.

(mm) No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) included or incorporated by reference in any of the Remarketing Disclosure Documents has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(nn) Nothing has come to the attention of the Company that has caused the Company to believe that the statistical and market-related data included or incorporated by reference in the Remarketing Disclosure Documents is not based on or derived from sources that are reliable and accurate in all material respects.

(oo) There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply in any material respect with any provision of the Sarbanes-Oxley Act of 2002, as amended and the rules and regulations promulgated in connection therewith (the "**Sarbanes-Oxley Act**"), including Section 402 related to loans and Sections 302 and 906 related to certifications.

(pp) [In connection with any Remarketing conducted in accordance with Rule 144A under the Securities Act or any other exemption from registration thereunder, (i) none of the Company, its affiliates (as defined in Rule 501(b) under the Securities Act) or any person acting on its or their behalf (other than the Remarketing Agent, as to which the Company makes no representation) has, directly or indirectly, solicited any offer to buy or offered to sell, or will, directly or indirectly, solicit any offer to buy or offer to sell, the Remarketed Notes by means of any form of general solicitation or general advertising (within the meaning of Rule 502(c) under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act; (ii) none of the Company, its affiliates or any person acting on its or their behalf has, directly or indirectly, sold, offered for sale or solicited offers to buy, or will sell, offer for sale or solicit offers to buy, any security (as defined in the Securities Act) that is or would be integrated with the sale of the Remarketed Notes in a manner that would require registration of the Remarketed Notes under the Securities Act; (iii) the Remarketed Notes, when remarketed, will not be of the same class (within the meaning of Rule 144A(d)(3)(i) under the Securities Act) as securities listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted in an automated inter-dealer quotation system; and (iv) assuming the accuracy of the representations and warranties of the Remarketing Agent in Section 5(i) hereof and compliance by the Remarketing Agent with its agreements therein, no registration of the Remarketed Notes under the Securities Act and no qualification of the Indenture under the Trust Indenture Act is required for the offer and sale of the Remarketed Notes in the manner contemplated by this Agreement and the Remarketing Disclosure Documents.]

(qq) This Agreement has been duly authorized, executed and delivered by the Company.

[ADDITIONAL REPRESENTATIONS AND WARRANTIES, IF ANY]

Section 4. FEES.

In the event of a Successful Remarketing of the Remarketed Notes, the Company shall pay the Remarketing Agent a remarketing fee to be agreed upon in writing by the Company and the Remarketing Agent prior to any such Remarketing (the "**Remarketing Fee**").

Section 5. COVENANTS OF THE COMPANY.

The Company covenants and agrees as follows:

(a) If and to the extent the offering of the Remarketed Notes in the Remarketing is required (in the view of counsel for the Company or counsel for the Remarketing Agent) to be registered under the Securities Act as in effect at the time of the Remarketing, the Company shall (Section 5(a) of this Agreement, the "**Registration Covenants**"):

(i) if the Registration Statement is an "automatic shelf registration statement" (as defined in Rule 405 under the Securities Act) on Form S-3ASR and if, at any time prior to the Remarketing Settlement Date, the Company receives from the Commission a notice pursuant to Rule 401(g)(2) or otherwise ceases to be eligible to use the automatic shelf registration statement form, then (A) promptly notify the Remarketing Agent, (B) promptly file a new registration statement or post-effective amendment on the proper form relating to the Remarketed Notes, in a form satisfactory to the Remarketing Agent, (C) use its reasonable best efforts to cause such registration statement or post-effective amendment to be declared effective and (D) promptly notify the Remarketing Agent of such effectiveness; take all other reasonable action necessary or appropriate to permit the public offering and sale of the Remarketed Notes to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be;

(ii) pay the required Commission filing fees relating to the Remarketed Notes within the time required by Rule 456(b)(1) under the Securities Act (without giving effect to the proviso therein) and in any event prior to the applicable Remarketing Settlement Date, and, if applicable, update the "Calculation of Filing Fee Tables" in accordance with Rule 456(b)(1)(ii) under the Securities Act either in a post-effective amendment to the Registration Statement or on the cover page of a prospectus filed pursuant to Rule 424(b) under the Securities Act;

(iii) prepare the Prospectus, in a form approved by the Remarketing Agent (such approval not to be unreasonably withheld), file any such Prospectus pursuant to the Securities Act within the period required by the Securities Act and the Rules and Regulations and use commercially reasonable efforts to cause, if not already effective, the Registration Statement to be declared effective by the Commission prior to the applicable Remarketing Date (it being understood that, for so long as there is a material business transaction or development that has not yet been publicly disclosed, other than in connection with an Optional Remarketing, the Company will not be required to file such Registration Statement or provide such a Prospectus until the Company has publicly disclosed such transaction or development);

(iv) file with the Commission any amendment to the Registration Statement or the Prospectus or any supplement to the Prospectus that may, in the reasonable judgment of the Company or the Remarketing Agent, be required by the Securities Act or requested by the Commission;

(v) advise the Remarketing Agent promptly after it receives notice thereof, of the time when, (A) prior to the Remarketing Settlement Date, any amendment to the Registration Statement has been filed or becomes effective or, (B) before, on or after the Remarketing Settlement Date, any supplement to the Prospectus or any amended Prospectus has been filed, and in each such case excluding documents filed under the Exchange Act incorporated by reference and in each case of (A) and (B) furnish the Remarketing Agent with copies of such notice;

(vi) 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) or (c), 14 or 15(d) of the Exchange Act subsequent to the Commencement Date and for so long as the delivery of a prospectus is required in connection with the offering or sale of the Remarketed Notes (including in circumstances where such requirement may be satisfied pursuant to Rule 172), and during such same period to advise the Remarketing Agent, promptly after it receives notice thereof, (A) of the time when any amendment to any Registration Statement has become effective or any supplement to any Prospectus or any amended Prospectus has been filed, (B) of the issuance by the Commission of any stop order or of any order preventing or suspending the use of the Prospectus, (C) of the suspension of the qualification of the Remarketed Notes for offering or sale in any jurisdiction, (D) of the initiation or threatening of any proceeding or examination for any such purpose or pursuant to Section 8A of the Securities Act, (E) of any request by the Commission for the amending or supplementing of any Registration Statement or Prospectus or for additional information or the receipt of any comments from the Commission relating to the Registration Statement, or (F) 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 in the event of the issuance of any such stop order or of any such order preventing or suspending the use of any Prospectus or suspending any such qualification, use promptly its reasonable best efforts to obtain its withdrawal;

(vii) if reasonably requested by the Remarketing Agent, prepare a final term sheet for the Remarketed Notes, containing solely a description of the Remarketed Notes, in a form agreed to with the Remarketing Agent, and file such final term sheet and all other Permitted Free Writing Prospectuses required to be filed by the Company with the Commission pursuant to Rule 433(d) under the Securities Act within the time required by such Rule;

(viii) furnish promptly to the Remarketing Agent such copies of the following documents in such quantities as the Remarketing Agent shall reasonably request: (a) conformed copies of the Registration Statement as originally filed with the Commission and each amendment thereto (in each case excluding exhibits); (b) the Preliminary Prospectus and any amendment or supplement thereto; (c) the Prospectus and any amendment or supplement thereto; (d) any Permitted Free Writing Prospectus and any amendment or supplement thereto, and (e) any document incorporated by reference in the Prospectus (excluding exhibits thereto); and, if at any time when delivery of a prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the Securities Act) is required in connection with the Remarketing, any event or development shall have occurred as a result of which (1) the Prospectus (or, if prior to the Remarketing Settlement Date, the 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 under which they were made when such Prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the Securities Act) is delivered, not misleading, or (2) if for any other reason it shall be necessary, in the reasonable judgment of the Company or the Remarketing Agent, during such same period to amend or supplement the Prospectus (or the Disclosure Package) or to file under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Securities Act or the Exchange Act, or (3) if it shall be necessary during such same period to amend or supplement a Permitted Free Writing Prospectus in order for a Permitted Free Writing Prospectus, as so amended or supplemented, not to conflict with the information then contained in the Registration Statement, then in each case notify the Remarketing Agent and, upon its request, file such document and prepare and furnish without charge to the Remarketing Agent and to any dealer in securities as many copies as the Remarketing Agent may from time to time reasonably request of an amended or supplemented Prospectus (or Disclosure Package) that will correct such statement or omission or effect such compliance or an amended or supplemented Permitted Free Writing Prospectus that will not conflict with the Registration Statement;

(ix) during the time between the applicable Commencement Date and the Remarketing Settlement Date, prior to filing with the Commission (a) any amendment to the Registration Statement or supplement to the Prospectus or (b) any Prospectus pursuant to Rule 424 under the Securities Act, furnish a copy thereof to the Remarketing Agent; and not file any such amendment or supplement that shall be reasonably disapproved by the Remarketing Agent;

(x) make generally available to its security holders and the Remarketing Agent as soon as practicable an earning statement that satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 under the Securities Act 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 with respect to the Remarketed Notes; and

(xi) qualify the Remarketed Notes for offer and sale under the securities or "blue sky" laws of such jurisdictions as the Remarketing Agent shall reasonably request and continue such qualifications in effect so long as required for distribution of the Remarketed Notes; provided that the Company shall not be required to (A) 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, (B) file any general consent to service of process in any such jurisdiction or (C) subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(b) The Company shall pay: (i) the costs incident to the preparation and printing of the Registration Statement, if any, any Preliminary Prospectus, any Permitted Free Writing Prospectus, any Prospectus and any other Remarketing Materials and any amendments or supplements thereto; (ii) the costs of distributing the Registration Statement, if any, any Prospectus and any other Remarketing Materials and any amendments or supplements thereto; (iii) any fees and expenses of qualifying the Remarketed Notes under the securities laws of the several jurisdictions as provided in Section 5(a)(xi) of this Agreement and of preparing, printing and distributing a Blue Sky Memorandum, if any (including any related reasonable fees and expenses of counsel to the Remarketing Agent not to exceed $[ ]); (iv) any fees charged by investment rating agencies for rating of the Remarketed Notes; (v) all other costs and expenses incident to the performance of the obligations of the Company hereunder and the Remarketing Agent hereunder; (vi) the reasonable fees and expenses of counsel to the Remarketing Agent in connection with the review by the Financial Industry Regulatory Authority, Inc. of the Remarketed Notes (such fees and expenses not to exceed $[_____]); (vii) the fees and expenses of the Trustee, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary in connection with the Remarketing, including fees and disbursements of counsel for the Trustee, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary; and (viii) all expenses and application fees related to having the Remarketed Notes be eligible for delivery and settlement through the facilities of The Depository Trust Company. [Except as expressly provided herein, the Remarketing Agent will pay all of its own expenses, including the fees of its counsel.][2]

[2] NTD: Subject to agreement on fee arrangement at time of remarketing.

(c) The Company shall furnish the Remarketing Agent with such information and documents as the Remarketing Agent may reasonably request in connection with the transactions contemplated hereby, and make reasonably available to the Remarketing Agent and any accountant, attorney or other advisor retained by the Remarketing Agent such information, and such access to the appropriate officers, employees and accountants of the Company, that parties would customarily require, and reasonably requested by the Remarketing Agent, in connection with a due diligence investigation conducted in accordance with applicable securities laws.

(d) At the written request of the Remarketing Agent, between the applicable Commencement Date and the applicable Remarketing Settlement Date, the Company will not, without the prior written consent of the Remarketing Agent (which consent may be withheld at the reasonable discretion of the Remarketing Agent), directly or indirectly, (i) sell, offer, contract to sell or grant any option to sell, pledge, establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, or otherwise dispose of, any debt securities of the Company similar to the Remarketed Notes, or any securities convertible into or exchangeable for such debt securities, which mature more than one year after the applicable Remarketing Settlement Date, or (ii) file any registration statement under the Securities Act with respect to any of the foregoing (other than the Registration Statement relating to the Remarketed Notes).

(e) The Company represents and agrees that, unless it obtains the prior written consent of the Remarketing Agent, which consent shall not be unreasonably withheld, and the Remarketing Agent represents and agrees that, unless it obtains the prior written consent of the Company, it has not made and will not make any offer relating to the Remarketed Notes that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a "free writing prospectus" (as defined in Rule 405 under the Securities Act), required to be filed by the Company with the Commission or retained by the Company under Rule 433; provided that, if prepared and used in accordance with Section 5(f) of this Agreement, such prior written consent shall be deemed given with respect to any final term sheet. Any such free writing prospectus consented to in writing by the Company or the Remarketing Agent, as the case may be, is hereinafter referred to as a "**Permitted Free Writing Prospectus**". The Company represents that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an "issuer free writing prospectus" (as defined in Rule 433 of the Securities Act) and has complied and will comply in all material respects with the requirements of Rules 164 and 433 of the Securities Act applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping.

(f) The Company will prepare a final term sheet relating to the Remarketed Notes, containing only information that describes the final terms of the Remarketed Notes after providing the Remarketing Agent and its legal counsel with a reasonable opportunity to review and comment on such final term sheet (such final term sheet to be in form and substance as last reviewed by the Remarketing Agent and the Company), and will file such final term sheet within the period required by Rule 433(d) of the Securities Act following the date such final terms have been established for the Remarketed Notes. Any such final term sheet is an Issuer Free Writing Prospectus and a Permitted Free Writing Prospectus for purposes of this Agreement.

(g) The Company will not, and will cause its subsidiaries and affiliates not to, 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 Remarketed Notes.

(h) If the Registration Covenants are applicable, the Company will, pursuant to reasonable procedures developed in good faith, retain copies of each Permitted Free Writing Prospectus that is not filed with the Commission in accordance with Rule 433 under the Securities Act.

(i) [In connection with any Remarketing conducted in accordance with Rule 144A under the Securities Act or any other exemption from registration thereunder, the Company will (i) prepare the Private Placement Marketing Materials and any final offering memorandum or similar offering document relating to the Remarketed Notes in consultation with the Remarketing Agent, furnish copies thereof to the Remarketing Agent in such quantities as it may reasonably request and not distribute any amendment or supplement thereto to which the Remarketing Agent reasonably objects; (ii) if, prior to the Remarketing Settlement Date, any event or development shall occur or condition shall exist as a result of which any Remarketing Disclosure Document 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 delivered to a purchaser, not misleading, promptly notify the Remarketing Agent thereof and prepare and furnish to the Remarketing Agent such amendments or supplements as may be necessary to correct such statement or omission; (iii) for so long as any Remarketed Notes are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, during any period in which the Company is not subject to Section 13 or 15(d) of the Exchange Act, furnish to holders and prospective purchasers of the Remarketed Notes, upon request, the information required by Rule 144A(d)(4) under the Securities Act; (iv) not, and not permit any of its affiliates to, sell, offer for sale or solicit offers to buy any security (as defined in the Securities Act) that would be integrated with the Remarketing in a manner that would require registration of the Remarketed Notes under the Securities Act; and (v) not, and cause its affiliates and any person acting on its or their behalf (other than the Remarketing Agent, as to which no covenant is given) not to, solicit any offer to buy or offer to sell the Remarketed Notes by means of any form of general solicitation or general advertising (within the meaning of Rule 502(c) under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act. In connection with any such Remarketing, the Remarketing Agent represents and agrees that it will offer and sell the Remarketed Notes only to persons it reasonably believes to be "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) in transactions meeting the requirements of Rule 144A or as otherwise permitted by such other exemption, and that it has not and will not solicit offers for, or offer or sell, the Remarketed Notes by means of any form of general solicitation or general advertising (within the meaning of Rule 502(c) under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act.]

Section 6. CONDITIONS TO THE REMARKETING AGENT'S OBLIGATIONS.

The obligations of the Remarketing Agent hereunder shall be subject to the performance by the Company of its covenants and other obligations hereunder and to the following additional conditions:

(a) If the Registration Covenants are applicable, 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 Permitted Free Writing Prospectus (including any final term sheet) shall have been timely filed with the Commission under the Securities Act (in the case of a Permitted Free Writing Prospectus, to the extent required by Rule 433 under the Securities Act); the Company shall have paid the required Commission filing fees relating to the Remarketed Notes within the time period required by Rule 456(b)(1) under the Securities Act (without giving effect to the proviso therein) and otherwise in accordance with Rules 456(b) and 457(r) under the Securities Act; and all requests by the Commission for additional information shall have been complied with to the reasonable satisfaction of the Remarketing Agent.

(b) No event or condition of a type described in Section 3(i) hereof shall have occurred or shall exist subsequent to the Commencement Date, which event or condition is not described in the Remarketing Disclosure Documents (excluding any amendment or supplement thereto first distributed after the time of the first sale of Remarketed Notes to investors) and the effect of which in the judgment of the Remarketing Agent makes it impracticable or inadvisable to proceed with the Remarketing or the settlement thereof on the terms and in the manner contemplated by this Agreement and the Remarketing Disclosure Documents (a "Material Adverse Change").

(c) Subsequent to the earlier of (A) the time of the first sale of Remarketed Notes to investors in connection with a Remarketing and (B) the applicable Remarketing Date, (i) no downgrading shall have occurred in the rating accorded the Remarketed Notes or any other debt securities issued or guaranteed by the Company by any "nationally recognized statistical rating organization," as such term is defined under Section 3(a)(62) of the Exchange Act and (ii) no such organization shall have publicly announced that it has under surveillance or review, or has changed its outlook with respect to, its rating of the Remarketed Notes or any such other debt securities (other than an announcement with positive implications of a possible upgrading).

(d) The representations and warranties of the Company contained herein shall be true and correct in all material respects on and as of the applicable Remarketing Date and Remarketing Settlement Date; 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 applicable Remarketing Settlement Date; and the Company shall have performed in all material respects all covenants and agreements contained herein and in the Purchase Contract and Pledge Agreement to be performed on its part at or prior to such date.

(e) The Remarketing Agent shall have received on and as of the applicable Remarketing Settlement Date a certificate of the chief financial officer or chief accounting officer of the Company and one additional senior executive officer of the Company who is reasonably satisfactory to the Remarketing Agent (i) confirming that such officers have carefully reviewed the Remarketing Disclosure Documents and, to the knowledge of such officers, the representations set forth in Sections 3(b), 3(c) and 3(f) hereof, as applicable, are true and correct, (ii) confirming that the other representations and warranties of the Company in this Agreement are true and correct and that the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Remarketing Settlement Date and (iii) to the effect set forth in paragraphs (a), (b) and (c) above.

(f) On the date of pricing of a Successful Remarketing and on the applicable Remarketing Settlement Date, Deloitte & Touche LLP or such other independent registered public accounting firm as shall have audited the financial statements of the Company included or incorporated by reference in the Remarketing Disclosure Documents shall have furnished to the Remarketing Agent, at the request of the Company, letters, dated the respective dates of delivery thereof and addressed to the Remarketing Agent, in form and substance reasonably satisfactory to the Remarketing Agent, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters or initial purchasers, as applicable, with respect to the financial statements and certain financial information contained or incorporated by reference in the Remarketing Disclosure Documents; provided that the letter delivered on the Remarketing Settlement Date shall use a "cut-off" date no more than two business days prior to the Remarketing Settlement Date.

(g) Sullivan & Cromwell LLP, counsel for the Company, shall have furnished to the Remarketing Agent its opinion and related disclosure letter, addressed to the Remarketing Agent and dated as of the applicable Remarketing Settlement Date, addressing such matters as are set forth in such counsel's opinion and disclosure letter furnished pursuant to Section 6(g) of the Underwriting Agreement, adapted as necessary to relate to the Remarketed Notes and to the Remarketing Materials, if any, or to any changed circumstances or events occurring subsequent to the date of this Agreement, such adaptations being reasonably acceptable to the Remarketing Agent.

(h) Simpson Thacher & Bartlett LLP, counsel for the Remarketing Agent, shall have furnished to the Remarketing Agent its opinion and related disclosure letter, addressed to the Remarketing Agent and dated as of the applicable Remarketing Settlement Date, addressing such matters as are set forth in such counsel's opinion and disclosure letter furnished pursuant to Section 6(i) of the Underwriting Agreement, adapted as necessary to relate to the Remarketed Notes and to the Remarketing Materials, if any, or to any changed circumstances or events occurring subsequent to the date of this Agreement, such adaptations being reasonably acceptable to the Remarketing Agent.

(i) Subsequent to the Commencement Date and prior to the applicable Remarketing Settlement Date, there shall not have occurred any of the following: (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 Remarketing Agent, is material and adverse and makes it impracticable or inadvisable to proceed with the Remarketing or the settlement thereof on the terms and in the manner contemplated by this Agreement and the Remarketing Disclosure Documents.

(j) 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 applicable Remarketing Settlement Date, prevent the remarketing or settlement of the Remarketed Notes; and no injunction or order of any federal, state or foreign court shall have been issued that would, as of the applicable Remarketing Settlement Date, prevent the remarketing or settlement of the Remarketed Notes.

(k) The Remarketing Agent shall have received on and as of the applicable Remarketing Settlement Date satisfactory evidence of the good standing of the Company in the state of its incorporation, in writing or any standard form of telecommunication from the appropriate governmental authorities of such jurisdiction.

(l) On or prior to the applicable Remarketing Settlement Date, the Company shall have furnished to the Remarketing Agent such further certificates and documents as the Remarketing Agent 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 Remarketing Agent.

Section 7. INDEMNIFICATION.

(a) The Company agrees to indemnify and hold harmless the Remarketing Agent, its affiliates, directors and officers and each person, if any, who controls the Remarketing Agent 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, any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Disclosure Package, 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, the Prospectus or any amendment or supplement thereto, any related preliminary prospectus supplement, any Private Placement Marketing Materials or any final offering memorandum or similar offering document relating to the Remarketed Notes, as applicable, 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, in the light of the circumstances under which they were made, not misleading, in each case except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information furnished to the Company in writing by the Remarketing Agent expressly for use therein.

(b) The Remarketing Agent agrees 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 furnished to the Company in writing by the Remarketing Agent expressly for use in the Registration Statement, the Disclosure Package, any Issuer Free Writing Prospectus, any road show as defined in Rule 433(h) under the Securities Act, the Prospectus or any amendment or supplement thereto, any related preliminary prospectus supplement, any Private Placement Marketing Materials or any final offering memorandum or similar offering document relating to the Remarketed Notes, it being understood and agreed that the only such information consists of [●].

(c) If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any person in respect of which indemnification may be sought pursuant to either of 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 7 that the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary; (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood and agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be paid or reimbursed as they are incurred. Any such separate firm for the Remarketing Agent, its affiliates, directors and officers and any control persons of the Remarketing Agent shall be designated in writing by the Remarketing Agent 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) If the indemnification provided for in paragraph (a) or (b) 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 Remarketing Agent, on the other, from the Remarketing 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 Remarketing Agent, 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 Remarketing Agent, on the other, shall be deemed to be in the same respective proportions as the aggregate Remarketing Price of the Remarketed Notes sold in the Remarketing, less the Remarketing Fee, and the Remarketing Fee received by the Remarketing Agent, respectively, bear to such aggregate Remarketing Price. The relative fault of the Company, on the one hand, and the Remarketing Agent, 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 Remarketing Agent and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The Company and the Remarketing Agent agree that it would not be just and equitable if contribution pursuant to paragraph (d) above were determined by pro rata allocation 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 paragraph (d) and this paragraph (e), in no event shall the Remarketing Agent be required to contribute any amount in excess of the amount by which the Remarketing Fee received by the Remarketing Agent exceeds the amount of any damages that the Remarketing Agent 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.

(f) The remedies provided for in this Section 7 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.

Section 8. [RESERVED].

Section 9. RESIGNATION AND REMOVAL OF THE REMARKETING AGENT.

The Remarketing Agent may, upon 30 days' prior written notice, resign and be discharged from its duties and obligations hereunder, and the Company may remove the Remarketing Agent by written notice at any time, in the case of a resignation, delivered to the Company and the Purchase Contract Agent and, in the case of a removal, delivered to the Remarketing Agent and the Purchase Contract Agent; *provided*, however, that no such resignation nor any such removal shall become effective until the Company shall have appointed at least one nationally recognized broker-dealer as a successor Remarketing Agent and such successor Remarketing Agent shall have entered into a remarketing agreement with the Company, in which it shall have agreed to conduct the Remarketing in accordance with the Purchase Contract and Pledge Agreement in all material respects.

In any such case, the Company will use commercially reasonable efforts to appoint a successor Remarketing Agent and enter into such a remarketing agreement with such person as soon as reasonably practicable.

Section 10. DEALING IN SECURITIES.

The Remarketing Agent, when acting as the Remarketing Agent or in its individual or any other capacity, may, to the extent permitted by law, buy, sell, hold and deal in any of the Remarketed Notes, Corporate Units, Treasury Units or any of the securities of the Company (collectively, the "**Securities**"), but shall not be obligated to purchase any of the Remarketed Notes for its own account. The Remarketing Agent may exercise any vote or join in any action which any beneficial owner of such Securities may be entitled to exercise or take pursuant to the Indenture with like effect as if it did not act in any capacity hereunder.

Section 11. REMARKETING AGENT'S PERFORMANCE; DUTY OF CARE.

The duties and obligations of the Remarketing Agent shall be determined solely by the express provisions of the Transaction Documents, and the Remarketing Agent shall not be responsible for the performance of any other duties and obligations than as are specifically set forth in the Transaction Documents, and no implied covenants or obligations shall be read into the Transaction Documents against the Remarketing Agent. The Remarketing Agent may conclusively rely upon any notice or document given or furnished to the Remarketing Agent and conforming to the requirements of the Transaction Documents and shall be protected in acting upon any such notice or document reasonably believed by it to be genuine and to have been given, signed or presented by the proper party or parties. The Remarketing Agent shall have no obligation to determine whether there is any limitation under applicable law on the Reset Rate on the Notes or, if there is any such limitation, the maximum permissible Reset Rate on the Notes, and it shall rely solely upon written notice from the Company (which the Company agrees to provide prior to the third Business Day before the applicable Remarketing Date) as to whether or not there is any such limitation and, if so, the maximum permissible Reset Rate. The Remarketing Agent, acting under this Agreement, shall incur no liability to the Company or to any holder of Remarketed Notes in its individual capacity or as Remarketing Agent for any action or failure to act, on its part in connection with a Remarketing or otherwise, except if such liability is (a) judicially determined to have resulted from its failure to comply with the terms of this Agreement or bad faith, gross negligence or willful misconduct on its part or (b) determined pursuant to Section 7 of this Agreement. The provisions of this Section 11 shall survive the termination of this Agreement and shall survive the resignation or removal of the Remarketing Agent pursuant to this Agreement.

Section 12. TERMINATION.

This Agreement shall automatically terminate (a) as to the Remarketing Agent on the effective date of the resignation or removal of the Remarketing Agent pursuant to Section 9 of this Agreement and (b) on the earlier of (i) the occurrence of a Termination Event and (ii) the Business Day immediately following the Purchase Contract Settlement Date. Notwithstanding any termination of this Agreement, in the event there has been a Successful Remarketing, the obligations set forth in Section 4 hereof shall survive and remain in full force and effect until all amounts payable under said Section 4 hereof shall have been paid in full.

Section 13. REIMBURSEMENT OF REMARKETING AGENT'S EXPENSES.

If (i) this Agreement shall be terminated pursuant to Section 12 of this Agreement or if the settlement of the Remarketed Notes does not occur in connection with a Successful Remarketing because of any of the events referred to in clauses (i), (iii) or (iv) of Section 6(i) hereof, then the Company shall not then be under any liability to the Remarketing Agent except as provided in Sections 5(b) and 7 hereof and (ii) if this Agreement is terminated or the settlement of the Remarketed Notes does not occur in connection with a Successful Remarketing because of any of the events referred to in clauses (ii) of Section 6(i) hereof or due to the failure of the Company to satisfy any condition set forth in Section 6 hereof or to comply with any provision hereof, or any refusal or inability of the Company to perform its obligations hereunder, the Company will reimburse the Remarketing Agent for all out-of-pocket expenses, including fees and disbursements of Simpson Thacher & Bartlett LLP, counsel for the Remarketing Agent, reasonably incurred by the Remarketing Agent in making preparations for the Remarketing and the settlement of the Remarketed Notes, but the Company shall then be under no further liability to the Remarketing Agent with respect to such failed settlement of the Remarketed Notes except as provided in Sections 5(b) and 7 hereof.

Section 14. RECOGNITION OF THE U.S. SPECIAL RESOLUTION REGIMES

(a) In the event that any Remarketing Agent that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Remarketing Agent 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.

(b) In the event that any Remarketing Agent that is a Covered Entity or a BHC Act Affiliate of such Remarketing Agent becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Remarketing Agent 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.

"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.

Section 15. NO FIDUCIARY DUTY.

The Company hereby acknowledges that (a) the transactions contemplated under this Agreement are arm's-length commercial transactions between the Company, on the one hand, and the Remarketing Agent and any affiliate through which it may be acting, on the other hand, (b) the Remarketing Agent is not acting as a fiduciary of the Company and (c) the Company's engagement of the Remarketing Agent in connection with the Remarketing is as an independent contractor and not in any other capacity. Furthermore, the Company agrees that it is solely responsible for making its own judgments in connection with the Remarketing (irrespective of whether the Remarketing Agent has advised or is currently advising the Company on related or other matters, and the Remarketing Agent shall have no responsibility or liability to the Company with respect to the transactions contemplated hereby except the obligations expressly set forth in this Agreement). The Company agrees that it will not claim that the Remarketing Agent has rendered advisory services of any nature or respect, or owe a fiduciary or similar duty to the Company, in connection with such transaction or the process leading thereto.

Section 16. NOTICES.

All statements, requests, notices and agreements hereunder shall be in writing, and:

(a) if to the Remarketing Agent, shall be delivered or sent by mail or facsimile transmission to:

[●]

if to the Company, shall be delivered or sent by mail to:

H2O America
110 West Taylor Street,
San Jose, California 95110
Attention: Willie Brown, Vice President and General Counsel

(b) if to the Purchase Contract Agent, shall be delivered or sent by mail to:

[U.S. Bank Trust Company, National Association
Goodwin Square, 225 Asylum Street, 23rd Floor
Hartford, CT 06103
Email: [_____]

Attention: Global Corporate Trust]

Any such statements, requests, notices or agreements shall take effect at the time of receipt thereof.

Section 17. PERSONS ENTITLED TO BENEFIT OF AGREEMENT.

This Agreement shall inure to the benefit of and be binding upon each party hereto and its respective successors. This Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except that (x) the representations, warranties, indemnities and agreements of the Company contained in this Agreement shall also be deemed to be for the benefit of the Remarketing Agent and the person or persons, if any, who control the Remarketing Agent within the meaning of Section 15 of the Securities Act as referred to in Section 7 of this Agreement and (y) the indemnity agreement of the Remarketing Agent contained in Section 7 of this Agreement shall be deemed to be for the benefit of the Company's directors and officers who sign the Registration Statement, if any, and any person controlling the Company within the meaning of Section 15 of the Securities Act as referred to in Section 7 of this Agreement. Nothing contained in this Agreement is intended or shall be construed to give any person, other than the persons referred to herein, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

Section 18. SURVIVAL.

The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and the Remarketing Agent set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Remarketing Agent, the Company or any of the indemnified persons referred to in Section 7 hereof, and will survive delivery of the Remarketed Notes. The provisions of Sections 7, 11 and 13 hereof shall survive the resignation or removal of the Remarketing Agent pursuant to this Agreement or the termination and cancellation of this Agreement.

Section 19. GOVERNING LAW.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED WHOLLY WITHIN SUCH STATE.

Section 20. RESERVED.

Section 21. COUNTERPARTS.

This Agreement may be executed by any one or more of the parties hereto in any number of counterparts by manual, facsimile or electronic signature, each of which shall be deemed to be an original, but all such respective counterparts shall together constitute one and the same instrument. The words “execution,” “signed,” “delivery” and words of like import in or relating to this Agreement or any document to be signed in connection with this Agreement shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means.

Section 22. HEADINGS.

The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

Section 23. SEVERABILITY.

If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any or all jurisdictions because it conflicts with any provisions of any constitution, statute, rule or public policy or for any other reason, then, to the extent permitted by law, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatsoever.

Section 24. AMENDMENTS.

This Agreement may be amended by an instrument in writing signed by the parties hereto. Each of the Company and the Purchase Contract Agent agrees that it will not enter into, cause or permit any amendment or modification of the Transaction Documents or any other instruments or agreements relating to the Applicable Ownership Interests in Notes, the Notes, or the Corporate Units that would in any way materially adversely affect the rights, duties and obligations of the Remarketing Agent, without the prior written consent of the Remarketing Agent.

Section 25. SUCCESSORS AND ASSIGNS.

Except in the case of a succession pursuant to the terms of the Purchase Contract and Pledge Agreement, the rights and obligations of the Company hereunder may not be assigned or delegated to any other Person without the prior written consent of the Remarketing Agent. The rights and obligations of the Remarketing Agent hereunder may not be assigned or delegated to any other Person (other than an affiliate of the Remarketing Agent) without the prior written consent of the Company.

Section 26. RIGHTS OF THE PURCHASE CONTRACT AGENT.

Notwithstanding any other provisions of this Agreement, the Purchase Contract Agent shall be entitled to all the rights, protections, indemnities, immunities and privileges granted to the Purchase Contract Agent in the Purchase Contract and Pledge Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

If the foregoing correctly sets forth the agreement by and among the Company, the Remarketing Agent and U.S. Bank Trust Company, National Association, not individually but solely as the Purchase Contract Agent and as the attorney-in-fact of the Holders of the Purchase Contracts, please indicate your acceptance in the space provided for that purpose below.

Very truly yours,

H2O AMERICA

By: _____
Name:
Title:

CONFIRMED AND ACCEPTED:
[●]
as Remarketing Agent

By: _____
Name:
Title:

U.S. Bank Trust Company, National Association, as Purchase Contract Agent
and as attorney-in-fact of the Holders of the Purchase Contracts

By: _____
Name:
Title:

Schedule A

[●]

EXHIBIT 5.1

[Letterhead of Sullivan & Cromwell LLP]

November 3, 2026

H2O America,
110 W. Taylor Street,
San Jose, California 95110.

Ladies and Gentlemen:

In connection with the registration under the Securities Act of 1933 (the "Act") of 7,475,000 equity units (the "Securities") of H2O America, a Delaware corporation (the "Company"), we, as your counsel, have examined such corporate records, certificates and other documents, and such questions of law, as we have considered necessary or appropriate for the purposes of this opinion. Each Security will initially consist of a corporate unit, consisting of (i) a purchase contract issued by the Company (a "Purchase Contract") to purchase shares of the Company's common stock, par value $0.001 per share ("Shares"), and (ii) a 1/20 undivided beneficial ownership interest in $1,000 principal amount of the Company's 5.300% Remarketable Senior Notes due 2031 (the "Notes"). The Purchase Contracts have been issued pursuant to the Purchase Contract and Pledge Agreement, dated as of November 3, 2026 (the "Purchase Contract and Pledge Agreement"), between the Company and U.S. Bank Trust Company, National Association, as Purchase Contract Agent, Collateral Agent, Custodial Agent and Securities Intermediary (in such capacity, the "Purchase Contract Agent"), and the Notes have been issued pursuant to the Indenture, dated as of November 3, 2026 (the "Base Indenture"), as supplemented by the First Supplemental Indenture, dated as of November 3, 2026 (together with the Base Indenture, the "Indenture"), between the Company and U.S. Bank Trust Company, National Association, as Trustee (in such capacity, the "Trustee"). Upon the basis of such examination, it is our opinion that:

(1) Each of the Securities, the Purchase Contracts and the Notes constitute valid and legally binding obligations of the Company, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(2) When the Shares have been duly issued and paid for upon the settlement of the Purchase Contracts in accordance with the terms thereof and of the Purchase Contract and Pledge Agreement, the Shares will be validly issued, fully paid and nonassessable.

In rendering the foregoing opinions, we are not passing upon, and assume no responsibility for, any disclosure in any registration statement or any related prospectus or other offering material relating to the offer and sale of the Securities or the issuance of the Purchase Contracts, the Notes or the Shares.

The foregoing opinions are limited to the Federal laws of the United States, the laws of the State of New York and the General Corporation Law of the State of Delaware, and we are expressing no opinion as to the effect of the laws of any other jurisdiction.

We have relied as to certain factual matters on information obtained from public officials, officers of the Company and other sources believed by us to be responsible, and we have assumed that the Indenture has been duly authorized, executed and delivered by the Trustee, that the Purchase Contract and Pledge Agreement has been duly authorized, executed and delivered by the Purchase Contract Agent, that the Securities and the Notes conform to the specimens thereof examined by us, that the Purchase Contract Agent's certificates of authentication of the Securities have been manually signed by one of the Purchase Contract Agent's authorized signatories, that the Trustee's certificates of authentication of the Notes have been manually signed by one of the Trustee's authorized officers, that the Shares will be duly recorded by a transfer agent and duly registered by a registrar thereof in the direct registration system of the Company and that the signatures on all documents examined by us are genuine, assumptions which we have not independently verified.

We hereby consent to the filing of this opinion as an exhibit to the Company's Current Report on Form 8-K dated November 3, 2026 and to the reference to us under the heading "Validity of Equity Units" in the Prospectus Supplement, dated October 29, 2026, relating to the Securities. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act.

Very truly yours,

/s/ SULLIVAN & CROMWELL LLP

EXHIBIT 8.1

[Letterhead of Sullivan & Cromwell LLP]

November 3, 2026

H2O America,
110 West Taylor Street,
San Jose, California 95110.

Re: Offering of Equity Units

Ladies and Gentlemen:

We have acted as counsel for H2O America, a Delaware corporation (the "Company"), in connection with the preparation and filing of a prospectus supplement dated October 29, 2026 ("Prospectus Supplement") and the prospectus dated October 29, 2026 (the "Prospectus") forming part of the registration statement on Form S-3 (File No. 333-282881) filed by the Company with the Securities and Exchange Commission (the "SEC") relating to the issuance and sale by the Company of up to 7,475,000 Equity Units (including 975,000 Equity Units if the underwriters exercise their over-allotment option in full) (the "Equity Units"). In connection therewith, we have participated in the preparation of the discussions set forth under the caption "MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS" in the Prospectus Supplement.

In connection with the preparation of our opinion, we have examined such documents and other materials as we have deemed appropriate, including, but not limited to, the Prospectus and the Prospectus Supplement. We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such corporate records, officer's certificates and other documents and have made such investigations of law as we have deemed necessary or appropriate as a basis for our opinion expressed below. In our examination, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures thereon, the legal capacity of natural persons executing such documents and the conformity to authentic original documents of all documents submitted to us as copies. Our opinion assumes (i) the accuracy of the facts contained in the Prospectus Supplement and other materials examined by us and (ii) the consummation of the offer to sell the Equity Units in the manner contemplated by, and in accordance with the terms set forth in, the Prospectus Supplement. In the event any of the facts, statements, descriptions, covenants, representations, warranties or assumptions upon which we have relied is incorrect, our opinion might be adversely affected and may not be relied upon.

Based upon and subject to the foregoing, the discussions contained in the Prospectus Supplement under the caption "MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS," insofar as they purport to describe provisions of U.S. federal income tax laws and regulations or legal conclusions with respect thereto, and subject to the limitations described therein, constitute the opinion of Sullivan & Cromwell LLP with respect to the matters set forth therein.

Our opinion expresses our view only as to United States federal income tax laws in effect as of the date hereof. The authorities upon which our opinion relies are subject to change with potential retroactive effect. There can be no assurance that changes in the law will not take place that could affect such United States federal income tax consequences. Nevertheless, by rendering our opinion we undertake no responsibility to advise you of any change in United States federal income tax laws or the application or interpretation thereof that could affect our opinion.

Our opinion is limited to the matters set forth herein, and no opinions are intended to be implied or may be inferred beyond those expressly stated herein. Furthermore, our opinion is not binding on the Internal Revenue Service or a court. In addition, we must note that our opinion represents merely our best legal judgment on the matters presented and that others may disagree with our conclusion. There can be no assurance that the Internal Revenue Service will not take a contrary position or that a court would agree with our opinion if litigated.

We hereby consent to the filing of this letter as Exhibit 8.1 to the Current Report on Form 8-K of the Company and to the use of our name under the caption "MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS" in the Prospectus Supplement. In giving this consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or under the rules and regulations of the SEC relating thereto.

Very truly yours,

/s/ SULLIVAN & CROMWELL LLP