

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

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**FORM 8-K**

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**CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

**Date of report (Date of earliest event reported): December 18, 2012**

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**Cinemark Holdings, Inc.**

(Exact Name of Registrant as Specified in Charter)

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**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-33401**  
(Commission  
File Number)

**20-5490327**  
(IRS Employer  
Identification No.)

**3900 Dallas Parkway, Suite 500, Plano, Texas**  
(Address of Principal Executive Offices)

**75093**  
(Zip Code)

**Registrant's telephone number, including area code: 972.665.1000**

**N/A**  
(Former Name or Former Address, if Changed Since Last Report)

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

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

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**Item 1.01 Entry into a Material Definitive Agreement.**

On December 18, 2012, Cinemark USA, Inc., our wholly-owned subsidiary (“Cinemark USA”), completed an offering of \$400 million aggregate principal amount of 5.125% Senior Notes due 2022 (the “Notes”) to qualified institutional buyers in reliance on Rule 144A and to persons outside the United States in accordance with Regulation S under the Securities Act of 1933, as amended (the “Securities Act”). Immediately following the closing of the Offering, Cinemark USA entered into an Amended and Restated Credit Agreement (the “Amended and Restated Credit Agreement”) with us, the several banks and other financial institutions or entities from time to time parties thereto (the “Lenders”) and Barclays Bank PLC, as administrative agent, which amends and restates Cinemark USA’s existing senior secured credit facility and provides for a term loan of \$700 million and a \$100 million revolving credit line. The Notes are guaranteed by certain of our other subsidiaries (the “Guarantors”) and the Amended and Restated Credit Agreement is guaranteed by us and the Guarantors. The net proceeds of the Offering and the borrowings under the Amended and Restated Credit Agreement will be used to fund the repayment of the term loans outstanding under Cinemark USA’s existing senior secured credit facility, to fund the purchase price for Cinemark USA’s acquisition of certain Rave-brand theatres and for other general corporate purposes.

***Indenture***

The Notes were issued pursuant to an Indenture, dated as of December 18, 2012 (the “Indenture”), by and among Cinemark USA, the Guarantors and Wells Fargo Bank, N.A., as trustee (the “Trustee”). Cinemark USA’s obligations under the Notes are fully and unconditionally guaranteed on a joint and several basis by the Guarantors and will be guaranteed by any Restricted Subsidiary (as defined in the Indenture) that guarantees, assumes or in any other manner becomes liable with respect to any indebtedness of Cinemark USA or any Guarantor. If Cinemark USA cannot make payments on the Notes when they are due, the Guarantors must make them instead.

The Notes and the guarantees of the Notes are the senior unsecured obligations of Cinemark USA and the Guarantors and rank equally in right of payment with all of the existing and future senior debt of Cinemark USA and the Guarantors, including all borrowings under Cinemark’s senior secured credit facility and its 8.625% Senior Notes due 2019, and senior in right of payment to all of the existing and future subordinated debt of Cinemark USA and the Guarantors, including Cinemark USA’s 7.375% Senior Subordinated Notes due 2021. The Notes and the guarantees of the Notes are effectively subordinated to all of the existing and future secured debt of Cinemark USA and the Guarantors, including all borrowings under our Amended and Restated Credit Agreement, to the extent of the value of the collateral securing such debt. The Notes and the guarantees of the Notes are structurally subordinated to all existing and future debt and other liabilities of Cinemark USA’s subsidiaries that are not Guarantors.

The Notes will mature on December 15, 2022. Interest on the Notes accrues at a rate of 5.125% per annum and is payable semi-annually in arrears on June 15 and December 15 of each year, commencing on June 15, 2013. Cinemark USA is obligated to make each interest payment to the holders of record of the Notes as of the immediately preceding June 1 and December 1.

Cinemark USA will have the option to redeem all or a portion of the Notes at any time on or after December 15, 2017 at redemption prices specified in the Indenture, plus accrued and unpaid interest on the Notes to the date of redemption. Prior to December 15, 2017, Cinemark USA has the option to redeem all or any part of the Notes at 100% of the principal amount, plus a make-whole premium, plus accrued and unpaid interest on the Notes to the date of redemption. At any time prior to December 15, 2015, Cinemark USA may also redeem up to 35% of the aggregate principal amount of Notes issued under the Indenture with the net proceeds of certain equity offerings at a redemption price equal to 105.125% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any.

Upon the occurrence of a Change of Control (as defined in the Indenture), Cinemark USA will be required to make an offer to each holder of Notes to repurchase all or any part of the Notes for a cash payment equal to 101% of the aggregate principal amount of the Notes repurchased, plus accrued and unpaid interest, if any, thereon to the date of repurchase.

The Indenture contains covenants that limit, among other things, the ability of Cinemark USA and certain of its subsidiaries to (1) make investments or other restricted payments, including paying dividends, making other distributions or repurchasing subordinated debt or equity, (2) incur additional indebtedness and issue preferred stock, (3) enter into transactions with affiliates, (4) enter new lines of business, (5) merge or consolidate with, or sell all or substantially all of its assets to, another person and (6) create liens.

The Indenture provides for customary events of default (subject in certain cases to customary grace and cure periods), which include nonpayment with respect to the Notes, the breach of covenants contained in the Indenture, payment defaults or acceleration of other indebtedness, the failure to pay certain judgments and certain events of bankruptcy, insolvency or reorganization. Generally, if an event of default occurs, the Trustee or holders of at least 25% in principal amount of the then outstanding Notes may declare the principal and accrued but unpaid interest on all the Notes to be due and payable immediately. In the case of certain events of bankruptcy, insolvency or reorganization, all outstanding Notes will become due and payable immediately without further action or notice.

The foregoing description of the Indenture is qualified in its entirety by reference to the complete copy of the Indenture that is filed as Exhibit 4.1 to this Current Report on Form 8-K and is incorporated by reference herein.

#### ***Exchange and Registration Rights Agreement***

In connection with the offering of the Notes, Cinemark USA and the Guarantors entered into an Exchange and Registration Rights Agreement, dated as of December 18, 2012 (the "Registration Rights Agreement"), with the initial purchasers of the Notes. Under the Registration Rights Agreement, Cinemark USA and the Guarantors have agreed to use their commercially reasonable best efforts to file a registration statement with the Securities and Exchange Commission within 120 days of December 18, 2012 with respect to an offer to exchange the Notes for substantially identical notes that are registered under the Securities Act. Cinemark USA and the Guarantors are required to use their commercially reasonable best efforts to cause the exchange offer registration statement to become effective at the earliest practicable time, but not later than 210 days after December 18, 2012 and to hold the exchange offer open for at least 20 business days. If Cinemark USA and the Guarantors fail to meet these or other certain obligations, they will be required to pay additional interest to the holders of the Notes. In addition, under certain circumstances, Cinemark USA will be required to file a registration statement for the resale of the Notes.

The foregoing description of the Registration Rights Agreement is qualified in its entirety by reference to the complete copy of the Registration Rights Agreement that is filed as Exhibit 4.2 to this Current Report on Form 8-K and is incorporated by reference herein.

#### ***Amended and Restated Credit Agreement***

The Amended and Restated Credit Agreement provides for a seven-year \$700 million term loan (reduced from approximately \$899.0 million) and a five-year \$100 million revolving credit line (increased from \$76.5).

Under the term loan, principal payments of \$1.75 million are due each calendar quarter through September 30, 2019, beginning on March 31, 2013. The term loan bears interest, at Cinemark USA's option, at: (A) the base rate equal to the highest of (i) the prime lending rate as publicly announced by Barclays Bank PLC as its prime rate in effect at its principal office in New York City, (ii) the federal funds effective rate from time to time plus 0.50%, and (iii) the "eurodollar rate" on such day for a deposit in U.S. Dollars with a maturity of one month plus 1.00%, plus a margin of 2.00% per annum, or (B) a "eurodollar rate" plus a margin of 3.00% per annum.

Borrowings under the revolving credit line bear interest, at Cinemark USA's option, at: (A) a base rate equal to the highest of (i) the prime lending rate as publicly announced by Barclays Bank PLC as its prime rate in effect at its principal office in New York City, (ii) the federal funds effective rate from time to time plus 0.50% and (iii) the "eurodollar rate" on such day for a deposit in U.S. Dollars with a maturity of one month plus 1.00%, plus a margin that ranges from 1.00% to 1.75% per annum, or (B) a "eurodollar rate" plus a margin that ranges from 2.00% to 2.75% per annum, in each case as adjusted pursuant to Cinemark USA's consolidated net senior secured leverage ratio, as defined in the Amended and Restated Credit Agreement. Cinemark USA will also be required to pay a commitment fee calculated at a percentage ranging from 0.250% to 0.500% per annum on the average daily unused portion of the amended revolving credit line, payable quarterly in arrears.

Cinemark USA's obligations under the Amended and Restated Credit Agreement are guaranteed by us and the other Guarantors and are secured by mortgages on certain fee and leasehold properties and security interests in substantially all of Cinemark USA's and our and the other Guarantors' personal property, including without limitation, pledges by Cinemark USA and by us and the other Guarantors of all of our capital stock and certain of Cinemark USA's domestic subsidiaries and 65% of the voting stock of certain of Cinemark USA's foreign subsidiaries.

The Amended and Restated Credit Agreement contains usual and customary negative covenants for transactions of this type, including, but not limited to, restrictions on our ability, and in certain instances, our subsidiaries' ability, to consolidate or merge or liquidate, wind up or dissolve; substantially change the nature of our business; sell, transfer or dispose of assets; create or incur indebtedness; create liens; pay dividends, repurchase stock and redeem outstanding notes; and make capital expenditures and investments. The negative covenants are subject to certain exceptions, as specified in the Amended and Restated Credit Agreement. The Amended and Restated Credit Agreement also requires Cinemark USA to satisfy, at any time when revolving credit loans are outstanding, a consolidated net senior secured leverage ratio, as determined in accordance with the Amended and Restated Credit Agreement.

The Amended and Restated Credit Agreement also includes customary events of default, including, among other things, payment default, covenant default, breach of representation or warranty, bankruptcy, cross-default, material ERISA events, a change of control, material money judgments and failure to maintain subsidiary guarantees. If an event of default occurs, all commitments under the Amended and Restated Credit Agreement may be terminated and all of Cinemark USA's obligations under the Amended and Restated Credit Agreement could be accelerated by the Lenders, causing all loans outstanding (including accrued interest and fees payable thereunder) to be declared immediately due and payable.

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

The information provided in Item 1.01 of this Form 8-K concerning the Indenture, the Notes and the guarantees thereof is hereby incorporated into this Item 2.03.

**Item 9.01 Financial Statements and Exhibits.**

(d) *Exhibits.*

<u>Exhibit No.</u>	<u>Exhibit Description</u>
4.1	Indenture, dated as of December 18, 2012, among Cinemark USA, Inc., the Guarantors named therein and Wells Fargo Bank, N.A., as trustee.
4.2	Exchange and Registration Rights Agreement, dated as of December 18, 2012, among Cinemark USA, Inc., the Guarantors named therein and the Initial Purchasers named therein.
4.3	Form of 5.125% Senior Notes due 2022 of Cinemark USA, Inc. (contained in the Indenture listed as Exhibit 4.1 above).
10.1	Amended and Restated Credit Agreement, dated as of December 18, 2012, among Cinemark USA, Inc., Cinemark Holdings, Inc., the several banks and other financial institutions and entities from time to time parties thereto, Barclays Bank PLC, Deutsche Bank Securities Inc., Morgan Stanley Senior Funding, Inc. and Wells Fargo Securities, LLC, as joint bookrunners, Morgan Stanley Senior Funding, Inc., as syndication agent, Deutsche Bank Securities Inc., Wells Fargo Securities, Inc. and Webster Bank, N.A., as co-documentation agents, and Barclays Bank PLC, as administrative agent.

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SIGNATURE

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

CINEMARK HOLDINGS, INC.

By: /s/ Michael D. Cavalier

Name: Michael D. Cavalier

Title: Senior Vice President — General Counsel

Date: December 20, 2012

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## EXHIBIT INDEX

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CINEMARK USA, INC.,  
THE GUARANTORS FROM TIME  
TO TIME PARTIES HERETO  
and  
WELLS FARGO BANK, N.A.  
as Trustee

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INDENTURE

Dated as of December 18, 2012

5.125% SENIOR NOTES DUE 2022

CROSS-REFERENCE TABLE\*

<u>Trust Indenture Act Section</u>	<u>Indenture Section</u>
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.05
(b)	12.03
(c)	12.03
313(a)	7.06
(b)(1)	N.A.
(b)(2)	7.06, 7.07
(c)	7.06, 12.02
(d)	7.06
314(a)	4.03, 12.05
(a)(1)	N.A.
(a)(2)	N.A.
(a)(3)	N.A.
(a)(4)	12.05
(b)	N.A.
(c)(1)	N.A.
(c)(2)	N.A.
(c)(3)	N.A.
(d)	N.A.
(e)	12.05
(f)	NA
315(a)	7.01
(b)	N.A.
(c)	7.01
(d)	7.01
(e)	6.11
316(a)(last sentence)	2.09
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.07
(c)	2.12
317(a)(1)	6.08
(a)(2)	6.09
(b)	2.04
318(a)	N.A.
(b)	N.A.
(c)	12.01

N.A. means Not Applicable

\* This Cross-Reference Table is not part of the Indenture



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INDENTURE dated as of December 18, 2012 among CINEMARK USA, INC., a Texas corporation, the subsidiary guarantors from time to time parties hereto and WELLS FARGO BANK, N.A., a national banking corporation, as trustee (the "Trustee").

The Company, the Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the Initial Notes, any Additional Notes and the Exchange Notes (in each case as defined herein):

ARTICLE 1.

DEFINITIONS AND INCORPORATION BY REFERENCE

**SECTION 1.01. Definitions.** "144A Global Note" means one or more global notes substantially in the form of Exhibit A hereto bearing the Global Note Legend, the Private Placement Legend and the ERISA Legend and deposited with or on behalf of, and registered in the name of, the Depository or its nominee that shall represent the aggregate principal amount of the Notes sold in reliance on Rule 144A.

"Acquired Debt" means, with respect to any specified Person:

- (i) Indebtedness of any other Person existing at the time such other Person is merged with or into or becomes a Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Subsidiary of, such specified Person; and
- (ii) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"Additional Interest" shall have the meaning set forth in the Registration Rights Agreement.

"Additional Notes" means any 5.125% Senior Notes due 2022 of the Company issued under this Indenture after the Issue Date, whether or not they bear the same "CUSIP" number as the Initial Notes, and having identical terms to the Initial Notes or the Exchange Notes other than with respect to the date of issuance and issue price, first payment of interest and rights under a related Registration Rights Agreement, if any.

"Adjusted Treasury Rate" means, with respect to any redemption date, (i) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated "H.15(519)" or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities" for the maturity corresponding to the Comparable Treasury Issue with respect to the Notes called for redemption (if no maturity is within three months before or after December 15, 2017, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Adjusted Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month) or (ii) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per year equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date, in each case calculated on the third business day immediately preceding the redemption date, plus, in the case of each of clause (i) and (ii), 0.50%.

“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 purposes of this definition, “control,” as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms “controlling,” “controlled by” and “under common control with” have corresponding meanings; *provided* that exclusively for purposes of Section 4.11, beneficial ownership of 10% or more of the Voting Stock of a Person shall be deemed to be control.

“Agent” means any Registrar, Paying Agent or co-registrar.

“Applicable Premium” means, at any redemption date, the excess of (A) the present value at such redemption date of (1) the redemption price of the Notes on December 15, 2017 (such redemption price being described in Section 3.07(b)) plus (2) all required remaining scheduled interest payments due on the Notes through December 15, 2017 (excluding accrued and unpaid interest), computed using a discount rate equal to the Adjusted Treasury Rate, over (B) the principal amount of the Notes on such redemption date. The Company will (a) calculate the Applicable Premium and the Adjusted Treasury Rate as of the second Business Day preceding the applicable redemption date and (b) prior to such redemption date file with the Trustee an Officers’ Certificate setting forth the Applicable Premium and the Adjusted Treasury Rate and showing the calculation of each in reasonable detail.

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

“Attributable Debt” in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP.

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

“Beneficial Owner” has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” or “group” of related persons (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), such “person” or “group” shall be deemed to have beneficial ownership of all securities that such “person” or “group” has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition or only after the passage of time. The terms “Beneficially Owns” and “Beneficially Owned” have corresponding meanings.

“Board of Directors” means:

- (i) with respect to a corporation, the board of directors of the corporation;
- (ii) with respect to a partnership, the board of directors of the general partner of the partnership; and

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(iii) with respect to any other Person, the board or committee of such Person serving a similar function.

“Broker-Dealer” means any broker-dealer that receives Exchange Notes for its own account in the Exchange Offer in exchange for Notes that were acquired by such broker-dealer as a result of market-making or other trading activities.

“Business Day” means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York or in the location of the Corporate Trust Office of the Trustee are authorized or required by law to close.

“Capital Lease Obligation” means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP.

“Capital Stock” means:

- (i) in the case of a corporation, corporate stock;
- (ii) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited);
- (iii) in the case of an association or other business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; and
- (iv) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Cash Equivalents” means:

- (i) U.S. dollars or in the case of any Foreign Restricted Subsidiary, such local currencies held by it from time to time in the ordinary course of business;
- (ii) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality of the U.S. government *provided* that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than 12 months from the date of acquisition;
- (iii) certificates of deposit and eurodollar time deposits with maturities of twelve months or less from the date of acquisition, bankers’ acceptances with maturities not exceeding twelve months and overnight bank deposits, in each case, with any lender party to the Credit Agreement or with any domestic commercial bank having capital and surplus in excess of \$100.0 million and a Thomson Bank Watch Rating of “B” or better;
- (iv) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (ii) and (iii) above entered into with any financial institution meeting the qualifications specified in clause (iii) above;
- (v) commercial paper having the rating of at least “P-1” from Moody’s or “A-1” from S&P and in each case maturing within 12 months after the date of acquisition;

(vi) with respect to any Foreign Restricted Subsidiary having its principal operations in Mexico only, (A) *Certificados de la Tesorería de la Federación (Cetes)*, *Bonos de Desarrollo del Gobierno Federal (Bonos)* or *Bonos Ajustables del Gobierno Federal (Ajustabonos)* in each case, issued by the Mexican government; and (B) any other instruments issued or guaranteed by Mexico and denominated and payable in pesos; *provided*, that, in each case, such investments under this clause (vi) are made in the ordinary course of business for cash management purposes;

(vii) demand or time deposit accounts used in the ordinary course of business with overseas branches of commercial banks incorporated under the laws of the United States, any state thereof, the District of Columbia, Canada or any province or territory thereof, *provided* that such commercial bank has, at the time of the Company's or such Restricted Subsidiary's Investment therein, (A) capital, surplus and undivided profits (as of the date of such institution's most recently published financial statements) in excess of \$100.0 million and (B) the long-term unsecured debt obligations (other than such obligations rated on the basis of the credit of a Person other than such institution) of such institution, at the time of the Company's or any Restricted Subsidiary's Investment therein, are rated in the highest rating category of both Moody's and S&P;

(viii) obligations (including, but not limited to demand or time deposits, bankers' acceptances and certificates of deposit) issued or guaranteed by a depository institution or trust company incorporated under the laws of the United States, any state thereof, the District of Columbia, Canada or any province or territory thereof, *provided* that (A) such instrument has a final maturity not more than one year from the date of purchase thereof by the Company or any Restricted Subsidiary of the Company and (B) such depository institution or trust company has at the time of the Company's or such Restricted Subsidiary's Investment therein or contractual commitment providing for such Investment, (x) capital, surplus and undivided profits (as of the date of such institution's most recently published financial statements) in excess of \$100.0 million and (y) the long-term unsecured debt obligations (other than such obligations rated on the basis of the credit of a Person other than such institution) of such institution, at the time of the Company's or such Restricted Subsidiary's Investment therein or contractual commitment providing for such Investment, are rated in the highest rating category of both S&P and Moody's;

(ix) in the case of any Foreign Restricted Subsidiary, demand or time deposit accounts used in the ordinary course of business with reputable commercial banks and similar institutions located in the jurisdiction of organization of such Foreign Restricted Subsidiary; and

(x) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (i) through (v) of this definition.

"Change of Control" means the occurrence of any of the following:

(i) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries taken as a whole to any "person" (as that term is used in Sections 13(d) and 14(d) of the Exchange Act) other than a Permitted Holder;

(ii) the adoption of a plan relating to the liquidation or dissolution of the Company; or

(iii) any "person" or "group" of related persons (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) other than one or more Permitted Holders becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Company or any Parent Entity, measured by voting power rather than number of shares.

“Clearstream” means Clearstream Banking, société anonyme, and its successors.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commission” means the Securities and Exchange Commission or any successor agency.

“Company” means Cinemark USA, Inc. until a successor shall have become such pursuant to the applicable provisions of this Indenture and thereafter “Company” shall mean such successor.

“Comparable Treasury Issue” means the United States Treasury security selected by the Quotation Agent as having a maturity comparable to the remaining term from the redemption date to December 15, 2017, that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of a maturity most nearly equal to December 15, 2017.

“Comparable Treasury Price” means, with respect to any redemption date, if clause (ii) of the Adjusted Treasury Rate is applicable, the average of three, or such lesser number as is obtained by the Trustee, Reference Treasury Dealer Quotations for the redemption date.

“Consolidated Cash Flow” means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period *plus*:

(i) any increase in deferred lease expense; *plus*

(ii) provision for taxes directly or indirectly based on income, receipts, margin or profits of such Person and its Restricted Subsidiaries for such period; *plus*

(iii) Fixed Charges to the extent such amounts are included in the calculation of Consolidated Net Income; *plus*

(iv) depreciation, impairment losses, charges, write-offs and write-downs, amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and other non-cash charges and expenses, including foreign exchange losses not included in operating income, (excluding (other than foreign advance rents paid at the inception of the lease) any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person and its Subsidiaries for such period; *plus*

(v) for purposes of calculating the Fixed Charge Coverage Ratio and the Senior Secured Leverage Ratio only, the Net Income of any Person and its Restricted Subsidiaries shall be calculated without deducting the income attributable to, or adding the losses attributable to, non-controlling interests of third parties in any non-wholly-owned Restricted Subsidiary; *plus*

(vi) for purposes of calculating the Fixed Charge Coverage Ratio and the Senior Secured Leverage Ratio only, any reasonable expenses and charges related to any Equity Offering, recapitalization or Indebtedness permitted to be incurred under this Indenture (in each case, whether or not successful); *plus*



(vii) any reasonable expenses and charges related to any Permitted Investment, acquisition or disposition permitted under this Indenture (in each case, whether or not successful) or the Refinancing Transactions; *minus*

(viii) non-cash items increasing such Consolidated Net Income for such period (including foreign exchange gains not included in operating income), other than (1) the accrual of revenue or amortization of prepaid cash income in the ordinary course of business and (2) the reversal of an accrual or cash reserve that was excluded pursuant to paragraph (iv) above in any prior period; *minus*

(ix) any decrease in deferred lease expense, in each case, on a consolidated basis and determined in accordance with GAAP;

*provided, however*, that expenses payable by any Parent Entity described in clause (xi) of the second paragraph of Section 4.07, the funds for which (or an equivalent amount of funds) are provided by the Company or its Restricted Subsidiaries shall be treated as if paid by the Company for the purposes of calculating Consolidated Cash Flow of the Company.

Notwithstanding the preceding sentence, clauses (i) through (ix) relating to amounts of a Restricted Subsidiary of a Person will be added to (or subtracted from) Consolidated Net Income to compute Consolidated Cash Flow of such Person only to the extent (and in the same proportion) that the net income (loss) of such Restricted Subsidiary was included in calculating the Consolidated Net Income of such Person.

“Consolidated Net Income” means, with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP, *provided, however*, in the case of the Company and its Restricted Subsidiaries, (1) Consolidated Net Income shall not include management fees from Unrestricted Subsidiaries except to the extent actually received by the Company and its Restricted Subsidiaries, (2) accrued but unpaid compensation expenses related to any stock appreciation, restricted stock or stock option plans shall not be deducted until such time as such expenses result in a cash expenditure and (3) compensation expenses related to tax payment plans implemented by the Company from time to time in connection with the exercise and/or repurchase of restricted stock or stock options shall not be deducted from Net Income to the extent of the related tax benefits arising therefrom; *provided, further*, that:

(i) the Net Income of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting shall be included only to the extent of the amount of dividends, distributions or other payments paid in cash (or marketable securities) to the specified Person or a Restricted Subsidiary of the specified Person (or, in the case of a loss, only to the extent funded with cash from the specified Person or a Restricted Subsidiary of the specified Person);

(ii) other than for the purpose of calculating the Fixed Charge Coverage Ratio and the Senior Secured Leverage Ratio, the Net Income of any Restricted Subsidiary shall be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained or, with respect to Foreign Restricted Subsidiaries, is typically obtained in the ordinary course of business consistent with past practice and shall be excluded to the extent such approval is subsequently not received) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders (other than to the extent of the amount of dividends or distributions that have actually been paid in the calculation period);

(iii) the cumulative effect of a change in accounting principles shall be excluded;

(iv) any non-cash goodwill or other intangible asset impairment charges incurred subsequent to the Start Date resulting from the application of SFAS No. 142 or ASC Topic 350 (or similar pronouncements) shall be excluded;

(v) any net after-tax income or loss from discontinued operations, net after-tax gains or losses on disposal of discontinued operations and losses arising from lease dispositions shall be excluded; and

(vi) items classified as extraordinary or nonrecurring gains and losses (less all fees and expenses related thereto) or expenses (including, without limitation, costs and expenses arising from the Refinancing Transactions), and the related tax effects according to GAAP, shall be excluded.

“Consolidated Net Tangible Assets” means, as of any date of determination, the consolidated total assets of the Company and its Restricted Subsidiaries determined in accordance with GAAP as of the end of the Company’s most recent fiscal quarter for which internal financial statements are available, less the sum of (i) all current liabilities and current liability items, and (ii) all goodwill, trade names, trademarks, patents, organization expense, unamortized debt discount and expense and other similar intangibles properly classified as intangibles in accordance with GAAP.

“Construction Indebtedness” means Indebtedness incurred by the Company or its Restricted Subsidiaries in connection with the construction of motion picture theatres or screens.

“Corporate Trust Office of the Trustee” means the office of the Trustee in Dallas, Texas, at which at any particular time its corporate trust business shall be principally administered, which office at the date of the execution and delivery of this Indenture, as originally executed and delivered, is located at 750 N. St. Paul Place, Suite 1750, MAC: T9263-170, Dallas, Texas 75201, Attention: Corporate Trust, Municipal and Escrow Services.

“Credit Agreement” means that certain Credit Agreement, dated as of October 5, 2006 (as amended and restated on or prior to the Issue Date), by and among the Company, as borrower, Cinemark Holdings, Inc., Cinemark Inc., CNMK Holding, Inc. and the subsidiary guarantors named therein, as guarantors, the lenders and other entities party thereto and Lehman Commercial Paper Inc., as administrative agent, including any related notes, Guarantees, collateral documents, instruments and agreements executed in connection therewith from time to time, and in each case as amended, modified, renewed, refunded, replaced or refinanced from time to time.

“Credit Facilities” means one or more debt facilities (including, without limitation, the Credit Agreement), commercial paper facilities or indentures, in each case with banks or other institutional lenders or investors providing for revolving credit loans, term loans, debt securities, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit and any agreement or agreements governing Indebtedness incurred to refinance, replace, restructure or refund such agreements in whole or in part from time to time (whether with the original agent and lenders or other agents and lenders or otherwise).

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

“DCIP” means Digital Cinema Implementation Partners LLC, a Delaware limited liability company, and any similar Person with a primary business purpose of facilitating the implementation of digital cinemas in theatres and agreements and arrangements with respect to the financing of digital cinema and any Person that is a direct or indirect parent entity thereof and has no independent operations.

“Deemed Capitalized Leases” means obligations of the Company or any Restricted Subsidiary of the Company that are classified as “capital lease obligations” under GAAP due to the application of Emerging Issues Task Force Regulation 97-10 or ASC Topic 840 or any subsequent pronouncement having similar effect and, except for such regulation or pronouncement, such obligation would not constitute Capital Lease Obligations.

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

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

“Depository” means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 as the Depository with respect to the Notes, and any and all successors thereto appointed as depository hereunder and having become such pursuant to the applicable provision of this Indenture.

“Digital Projector Financing” means any financing arrangement in respect of digital projector equipment for use in the ordinary course of business in theatres owned, leased or operated by the Company and its Restricted Subsidiaries.

“Disqualified Stock” means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable), or upon the happening of any event, (i) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, (ii) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock which is convertible or exchangeable solely at the option of the Company or a Restricted Subsidiary), or (iii) is redeemable at the option of the holder of the Capital Stock, in whole or in part, in each case on or prior to the date that is 91 days after the earlier of the date on which the Notes mature or the date on which there are no Notes outstanding. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the Company to repurchase or redeem such Capital Stock upon the occurrence of a change of control or an asset sale not in the ordinary course of business will not constitute Disqualified Stock if the terms of such Capital Stock (and all such securities into which it is convertible or for which it is exchangeable) provide that the Company may not repurchase or redeem any such Capital Stock (and all such securities into which it is convertible or for which it is exchangeable) pursuant to such provisions unless such repurchase or redemption complies with Sections 4.07 and 4.15.

“Distribution Compliance Period” means the 40-day restricted period as defined in Regulation S.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“Equity Offering” means any public (other than pursuant to a Form S-4 or Form S-8 or any other form relating to securities issuable under any employee benefit plan of the Company or any Parent Entity) or private sale of Capital Stock (other than Disqualified Stock) made for cash on a primary basis by the Company or any Parent Entity (the proceeds of which have been contributed to the Company).

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

“Euroclear” means Euroclear Bank S.A./N.V., as operator of the Euroclear system, and its successors.

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

“Exchange Guarantees” means any substantially identical Subsidiary Guarantees (other than with respect to transfer restrictions) issued in an Exchange Offer for the Subsidiary Guarantees of the Initial Notes or any Additional Notes.

“Exchange Notes” means any substantially identical issue of Notes (other than with respect to transfer restrictions) issued in an Exchange Offer for the Initial Notes or any Additional Notes.

“Exchange Offer” has the meaning set forth in the Registration Rights Agreement.

“Exchange Offer Registration Statement” has the meaning set forth in the Registration Rights Agreement.

“Excluded Contribution” means the net cash proceeds received by the Company after the Issue Date from (i) contributions to its common equity capital and (ii) the sale (other than to a Subsidiary of the Company or pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Company or any of its Subsidiaries or Parent Entities) of Capital Stock (other than Disqualified Stock) of the Company or any Parent Entity (the proceeds of which have been contributed to the Company), in each case designated within 60 days of the receipt of such net cash proceeds as Excluded Contributions pursuant to an Officers’ Certificate, the cash proceeds of which are excluded from the calculation set forth in clauses (iii)(b) and (iii)(c) of the first paragraph of Section 4.07.

“Existing 2019 Senior Notes” means the \$470,000,000 aggregate principal amount of the Company’s 8.625% senior notes due 2019 issued on June 29, 2009 (less the aggregate principal amount of Existing 2019 Senior Notes that are thereafter repurchased, redeemed, discharged or otherwise paid).

“Existing 2021 Subordinated Notes” means the \$200,000,000 aggregate principal amount of the Company’s 7.375% senior subordinated notes due 2021 issued on June 3, 2011 (less the aggregate principal amount of Existing 2021 Subordinated Notes that are thereafter repurchased, redeemed, discharged or otherwise paid).

“Existing Indebtedness” means Indebtedness of the Company and its Restricted Subsidiaries in existence on the Issue Date (including the Existing 2019 Senior Notes and the Existing 2021 Subordinated Notes and the related guarantees), until such amounts are repaid.

“Fixed Charge Coverage Ratio” means with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Subsidiaries incurs, assumes, Guarantees, repays, repurchases or redeems any Indebtedness (other than ordinary working capital

borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "Calculation Date"), then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect to such incurrence, assumption, Guarantee, repayment, repurchase or redemption of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom as if the same had occurred at the beginning of the applicable four-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(i) acquisitions and Investments that have been made by the specified Person or any of its Restricted Subsidiaries (and by any Person so acquired), including through mergers or consolidations and including any related financing transactions, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date shall be given pro forma effect as if they had occurred on the first day of the four-quarter reference period and Consolidated Cash Flow for such reference period shall be calculated on a pro forma basis (giving effect to any Pro Forma Cost Savings);

(ii) operations or businesses disposed of prior to the Calculation Date shall be deemed to have been disposed of on the first day of the four-quarter reference period and the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, shall be excluded;

(iii) operations or businesses disposed of prior to the Calculation Date shall be deemed to have been disposed of on the first day of the four-quarter reference period and the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, shall be excluded, but only to the extent that the obligations giving rise to such Fixed Charges shall not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(iv) Consolidated Cash Flow shall include the effects of incremental contributions the Company reasonably believes in good faith could have been achieved during the relevant period as a result of a Theatre Completion had such Theatre Completion occurred as of the beginning of the relevant period; *provided, however*, that such incremental contributions were identified and quantified in good faith in an Officers' Certificate delivered to the Trustee at the time of any calculation of the Fixed Charge Coverage Ratio;

(v) Consolidated Cash Flow shall be calculated on a pro forma basis after giving effect to any motion picture theatre or screen that was permanently or indefinitely closed for business, at any time on or subsequent to the first day of such period as if such theatre or screen was closed for the entire period;

(vi) all preopening expense and theatre closure expense which reduced Consolidated Net Income during any applicable period shall be added to Consolidated Cash Flow;

(vii) the Fixed Charges attributable to interest on any Indebtedness computed on a pro forma basis and bearing a floating interest rate shall be computed as if the rate in effect on the date of computation had been the applicable rate for the entire period; and

(viii) with respect to any Indebtedness which bears, at the option of such Person, a fixed or floating rate of interest, such Person shall apply, at its option, either the fixed or floating rate.

“Fixed Charges” means, with respect to any specified Person for any period, the sum, without duplication, of:

(i) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, including, without limitation, amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations (but excluding any interest expense attributable to Deemed Capitalized Leases), imputed interest with respect to Attributable Debt, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers’ acceptance financings, and net of the effect of all payments made or received pursuant to interest rate Hedging Obligations (excluding the amortization or write-off of debt issuance costs incurred in connection with the Refinancing Transactions); *plus*

(ii) the consolidated interest of such Person and its Restricted Subsidiaries that was capitalized during such period; *plus*

(iii) any interest expense on Indebtedness of another Person that is Guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, whether or not such Guarantee or Lien is called upon; *plus*

(iv) the product of (a) all dividends paid (whether or not in cash) on any series of preferred stock of such Person or any of its Restricted Subsidiaries, other than dividends on Equity Interests payable (X) solely in Equity Interests of the Company (other than Disqualified Stock) or (Y) to the Company or a Restricted Subsidiary of the Company, times (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined effective federal, state and local statutory tax rate of such Person, expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP; *minus*

(v) the cash interest income (exclusive of deferred financing fees) of such specified Person and its Restricted Subsidiaries during such period, in each case as determined in accordance with GAAP consistently applied.

“Foreign Restricted Subsidiary” means any Restricted Subsidiary of the Company that is not organized under the laws of the United States, any state thereof or the District of Columbia.

“GAAP” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which were in effect on the Start Date.

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

“Global Notes” means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes, substantially in the form of Exhibit A hereto issued in accordance with Sections 2.01 or 2.06.

“Government Securities” means securities that are (i) direct obligations of the United States for the timely 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, the timely payment of

which is unconditionally guaranteed as a full faith and credit obligation by the United States 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 (as defined in Section 3(a)(2) of the Securities Act), as custodian, with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such 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 Government Securities or the specific payment of principal of or interest on the U.S. Government Obligation evidenced by such depository receipt.

“Guarantee” means with respect to any Person, any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Indebtedness of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

*provided* that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be the lesser of such Indebtedness and the amount of such Person’s maximum liability with respect thereto. The term “Guarantee” used as a verb has a corresponding meaning.

“Guarantor” means each Restricted Subsidiary of the Company that executes and delivers this Indenture on the Issue Date as a guarantor and each other Restricted Subsidiary of the Company that thereafter Guarantees the Notes pursuant to the terms of this Indenture, and their respective successors and assigns, in each case unless and until such Person is released from its obligations under its Subsidiary Guarantee pursuant to this Indenture.

“Hedging Obligations” means, with respect to any specified Person, the obligations of such Person incurred in the normal course of business and not for speculative purposes under:

(i) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements entered into with one or more financial institutions and designed to protect the Person entering into the agreement against interest rate risk;

(ii) foreign exchange contracts and currency protection agreements entered into with one or more financial institutions and designed to protect the Person entering into the agreement against currency exchange rate risk; and

(iii) any commodity futures contract, commodity option or other similar agreement or arrangement designed to protect against risk related to the price of commodities used by that Person.

“Holder” means a Person in whose name a Note is registered on the Registrar’s books.

“Indebtedness” means, with respect to any specified Person, any indebtedness of such Person, whether or not contingent (without duplication):

- (i) in respect of borrowed money;
- (ii) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);
- (iii) in respect of banker’s acceptances;
- (iv) representing Capital Lease Obligations and Attributable Debt of such Person;
- (v) representing the balance deferred and unpaid of the purchase price of any property, except any such balance that constitutes an accrued expense or trade payable;
- (vi) all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock or, with respect to any non-Guarantor Subsidiary, any preferred stock (but excluding, in each case, any accrued dividends); or
- (vii) representing the net amount owing under any Hedging Obligations,

if and to the extent any of the preceding items (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP, but excluding (a) deposits and advances received in the ordinary course of business and (b) Deemed Capitalized Leases. In addition, the term “Indebtedness” includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person.

The amount of any Indebtedness outstanding as of any date shall be:

- (i) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount to the extent such Indebtedness is deemed to ratably accrete to its stated principal amount pursuant to the instrument under which it was issued; and
- (ii) the principal amount of and premium (if any) in respect of the Indebtedness, together with any interest on the Indebtedness that is more than 30 days past due, in the case of any other Indebtedness.

“Indenture” means this Indenture, as amended or supplemented from time to time.

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

“Initial Notes” means the 5.125% Senior Notes due 2022 issued by the Company on the Issue Date.

“Initial Purchasers” means (i) with respect to the Initial Notes issued on the Issue Date, Barclays Capital Inc., Morgan Stanley & Co. LLC, Deutsche Bank Securities Inc., Wells Fargo Securities, LLC, and Nomura Securities International, Inc. and (ii) with respect to each issuance of Additional Notes, the Persons purchasing such Additional Notes under the related purchase agreement.



“Investments” means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, that would be classified as investments on a balance sheet prepared in accordance with GAAP. If the Company or any Subsidiary of the Company sells or otherwise disposes of any Equity Interests of any direct or indirect Subsidiary of the Company such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary of the Company, the Company shall be deemed to have made an Investment on the date of any such sale or disposition in an amount equal to the fair market value of the Equity Interests of such Subsidiary not sold or disposed of in an amount determined as provided in the second to last paragraph of Section 4.07.

“Issue Date” means December 18, 2012.

“Letter of Transmittal” means the letter of transmittal to be prepared by the Company and sent to all Holders of the Notes for use by such Holders in connection with the Exchange Offer.

“Lien” means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such property or asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

“Moody’s” means Moody’s Investors Service, Inc. and any successor to its rating agency business thereof.

“Net Income” means, with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends, excluding, however, any gain or loss (net of related costs, fees, expenses and with any related provision for taxes on such gain or loss) realized in connection with: (i) any asset sale other than in the ordinary course of business (as determined in good faith by senior management or the Board of Directors of such Person) or (ii) the disposition of any securities by such Person or any of its Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Subsidiaries.

“Net Senior Secured Indebtedness” of any Person means, as of any date of determination, (a) the aggregate amount of Indebtedness (other than Hedging Obligations and Capital Lease Obligations) constituting Senior Debt secured by a Lien of the Company and its Restricted Subsidiaries as of such date less (b) cash and Cash Equivalents of the Company and its Restricted Subsidiaries, in each case determined on a consolidated basis in accordance with GAAP.

“Non-Recourse Debt” means Indebtedness:

(i) as to which neither the Company nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (b) is directly or indirectly liable as a Guarantor or otherwise or (c) constitutes the lender, other than Indebtedness secured by Liens permitted by clause (ix) of the definition of Permitted Liens;

(ii) no default with respect to which (including any rights that the holders of the Indebtedness may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of any other Indebtedness (other than the

Notes) of the Company or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment of such other Indebtedness to be accelerated or payable prior to its Stated Maturity; and

(iii) as to which the lenders have been notified in writing that they shall not have any recourse to the stock or assets of the Company or any of its Restricted Subsidiaries.

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

“Note Custodian” means Wells Fargo Bank, N.A., as custodian with respect to the Notes in global form, or any successor entity thereto.

“Notes” means the Initial Notes, the Exchange Notes and any Additional Notes issued under this Indenture.

“Obligations” means any principal, premium and Additional Interest, if any, interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization, whether or not a claim for post-filing interest is allowed in such proceeding), penalties, fees, charges, expenses, indemnifications, reimbursement obligations, damages, guarantees and other liabilities or amounts payable under the documentation governing any Indebtedness or in respect thereto.

“Offering Memorandum” means the final offering memorandum, dated December 4, 2012, relating to the offering of the Notes issued on the Issue Date.

“Officer” means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of such Person.

“Officers’ Certificate” means a certificate signed by two Officers or by an Officer and an Assistant Secretary of the Company, which meets the requirements of Section 12.05.

“Opinion of Counsel” means an opinion from legal counsel, who is reasonably acceptable to the Trustee, which meets the requirements of Section 12.05. The counsel may be an employee of or counsel to the Company or any Subsidiary.

“Parent Entity” means any Person that is a direct or indirect parent of the Company.

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

“Permitted Business” means the lines of business conducted by the Company and its Subsidiaries on the Issue Date and any business incidental or reasonably related thereto or which is a reasonable extension thereof as determined in good faith by the Board of Directors of the Company and Cinemark Holdings, Inc.

“Permitted Business Investment” means any Investment made in a Permitted Business through agreements, transactions, interests or arrangements that permit one to share risks or costs, achieve economies of scale, pool resources, comply with regulatory requirements regarding local ownership or satisfy other objectives customarily achieved through the conduct of such businesses jointly with third parties, relating to ownership interests in projectors, advertising rights, ticketing rights, Internet properties and other tangible and intangible assets and properties, either directly or through entities the primary

business of which is to own or operate any of the foregoing, including entry into and Investments in the form of or pursuant to, operating agreements, pooling arrangements, service contracts, joint venture agreements, partnership agreements (whether general or limited), limited liability company agreements, subscription agreements, stock purchase agreements, stockholder agreements and other similar agreements with third parties (other than Unrestricted Subsidiaries).

“Permitted Holders” means (i) Permitted Mitchell Holders and (ii) Cinemark Holdings, Inc. and wholly-owned Subsidiaries thereof.

“Permitted Investments” means:

(i) any Investment in the Company or in a Restricted Subsidiary of the Company;

(ii) any Investment in Cash Equivalents;

(iii) any Investment by the Company or any Subsidiary of the Company in a Person, if as a result of such Investment:

(a) such Person becomes a Restricted Subsidiary of the Company; or

(b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary of the Company;

and, in each case, any Investment held by such Person; *provided*, that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer;

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

(v) workers’ compensation, utility, lease and similar deposits and prepaid expenses in the ordinary course of business, other pledges and deposits permitted under the definition of “Permitted Liens”, and endorsements of negotiable instruments and documents in the ordinary course of business;

(vi) loans or advances to employees (other than executive officers) made in the ordinary course of business;

(vii) any Investment made as a result of the receipt of non-cash consideration from an asset sale or other disposition;

(viii) Investments and other assets the payment for which consists of Equity Interests (exclusive of Disqualified Stock) of the Company, or Equity Interests of any Parent Entity; *provided, however*, that such Equity Interests will not increase the amount available for Restricted Payments under clause (iii) of the first paragraph of Section 4.07.

(ix) any Investment acquired by the Company or any of its Restricted Subsidiaries:

(a) in exchange for any Investment or accounts receivable held by the Company or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable; or

(b) as a result of a foreclosure by the Company or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(x) Hedging Obligations;

(xi) refundable construction advances made with respect to the construction of properties of a nature or type that are used in a business similar or related to the business of the Company or its Restricted Subsidiaries in the ordinary course of business;

(xii) advances or extensions of credit on terms customary in the industry in the form of accounts or other receivables incurred, or pre-paid film rentals, and loans and advances made in settlement of such accounts receivable, all in the ordinary course of business;

(xiii) other Investments in any Person having an aggregate fair market value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (xiii) that are at the time outstanding, not to exceed the greater of \$150.0 million and 7.5% of Consolidated Net Tangible Assets (determined as of the time each such Investment is made);

(xiv) Investments existing on the Issue Date;

(xv) Guarantees issued in accordance with Section 4.09;

(xvi) Permitted Business Investments;

(xvii) advances, loans or extensions of credit to suppliers and vendors in the ordinary course of business; and

(xviii) Investments in DCIP in an aggregate amount (measured on the date each such Investment was made and without giving effect to subsequent changes in value) not to exceed, at any one time outstanding, \$100.0 million.

“Permitted Liens” means:

(i) Liens on the property and assets of the Company and the Guarantors securing Indebtedness and Guarantees permitted to be incurred under this Indenture (other than subordinated Indebtedness of the Company or a Guarantor) in an aggregate principal amount not to exceed the greater of (a) the maximum principal amount of Indebtedness that, as of the date such Indebtedness was incurred, and after giving effect to the incurrence of such Indebtedness and the application of proceeds therefrom on a *pro forma* basis as if such events had occurred at the beginning of the relevant four-quarter period, would not cause the Senior Secured Leverage Ratio of the Company to exceed 2.75 to 1.00 and (b) the aggregate principal amount of Indebtedness permitted to be incurred pursuant to clause (i) of the second paragraph of Section 4.09; *provided* that in each case the Company may elect pursuant to an Officers’ Certificate delivered to the Trustee to treat all or any portion of the commitment under any Indebtedness as being incurred at such time, in which case any subsequent incurrence of Indebtedness under such commitment shall be deemed, for purposes of this clause (i), not to be an incurrence at such subsequent time;

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- (ii) Liens in favor of the Company or any Restricted Subsidiary of the Company;
  - (iii) Liens on property of a Person existing at the time such Person is merged with or into or consolidated with the Company or any Restricted Subsidiary of the Company; provided that such Liens were in existence prior to the contemplation of such merger or consolidation and do not extend to any assets other than those of the Person merged into or consolidated with the Company or the Restricted Subsidiary;
  - (iv) Liens on property existing at the time of acquisition of the property by the Company or any Restricted Subsidiary of the Company, *provided* that such Liens were in existence prior to the contemplation of such acquisition and do not extend to any other assets;
  - (v) Liens to secure the performance of statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature incurred in the ordinary course of business and related letters of credit;
  - (vi) Liens to secure Indebtedness (including Capital Lease Obligations) permitted by clause (iv) of the second paragraph of Section 4.09 covering only the assets, accessions, improvements and proceeds acquired with such Indebtedness;
  - (vii) Liens existing on the Issue Date (excluding Liens relating to obligations under Credit Facilities and Liens of the kind referred to in clause (i) of this definition);
  - (viii) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted, *provided* that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;
  - (ix) Liens on the Capital Stock of Unrestricted Subsidiaries;
  - (x) Encumbrances, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real properties or liens incidental to the conduct of the business of the Company or such Restricted Subsidiary or to the ownership or leasing of its properties which, in the aggregate, do not materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Company or such Restricted Subsidiary;
  - (xi) Leases or subleases granted to others that do not materially interfere with the ordinary course of business of the Company and its Restricted Subsidiaries, taken as a whole;
  - (xii) Landlords', carriers', warehousemen's, mechanics', materialmen's, repairmen's or the like Liens arising by contract or statute in the ordinary course of business and with respect to amounts which are not yet delinquent or are not more than 60 days past due or are being contested in good faith by appropriate proceedings, *provided* that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(xiii) Pledges or deposits made in the ordinary course of business (A) in connection with bids, tenders, leases, performance bonds and similar obligations, or (B) in connection with workers' compensation, unemployment insurance and other social security or similar legislation;

(xiv) Liens encumbering property or assets under construction arising from progress or partial payments by a customer of the Company or its Restricted Subsidiaries relating to such property or assets;

(xv) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(xvi) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business;

(xvii) Liens on or sales of receivables;

(xviii) the rights of film distributors under film licensing contracts entered into by the Company or any Restricted Subsidiary in the ordinary course of business on a basis customary in the movie exhibition industry;

(xix) any attachment or judgment Lien that does not constitute an Event of Default;

(xx) Liens in favor of the Trustee for its own benefit and for the benefit of the Holders of the Notes;

(xxi) Liens (including extensions and renewals thereof) upon real or personal property acquired after the Issue Date *provided* that (a) such Lien is created solely for the purpose of securing Indebtedness incurred, in accordance with Section 4.09, (1) to finance the cost (including the cost of improvement or construction) of the item of property or assets subject thereto and such Lien is created prior to, at the time of or within six months after the later of the acquisition, the completion of construction or the commencement of full operation of such property or (2) to refinance any Indebtedness previously so secured, (b) the principal amount of the Indebtedness secured by such Lien does not exceed 100% of such cost and (c) any such Lien shall not extend to or cover any property or assets other than such item of property or assets and any accessions, proceeds and improvements on such item;

(xxii) Liens incurred or deposits made to secure the performance of tenders, bids, leases, statutory or regulatory obligations, banker's acceptances, surety and appeal bonds, government contracts, performance and return-of-money bonds and other obligations of a similar nature incurred in the ordinary course of business (exclusive of obligations for the payment of borrowed money);

(xxiii) Liens securing Hedging Obligations;

(xxiv) Liens arising from filing Uniform Commercial Code financing statements with respect to leases;

(xxv) Liens incurred in the ordinary course of business of the Company or any Guarantor with respect to obligations that do not exceed \$50.0 million at any one time outstanding;

(xxvi) Liens arising solely by virtue of any statutory or common law provisions and ordinary course of business contractual provisions, in each case, relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository institution or brokerage;

(xxvii) Liens on property or shares of stock of a Person at the time such Person becomes a Restricted Subsidiary *provided, however*, that such Liens are not created, incurred or assumed in connection with, or in contemplation of, such other Person becoming a Restricted Subsidiary; *provided further, however*, that any such Lien may not extend to any other property owned by the Company or any Restricted Subsidiary;

(xxviii) Liens securing the Notes and the Subsidiary Guarantees;

(xxix) Liens securing Indebtedness incurred to refinance Indebtedness that was previously so secured (other than Liens incurred pursuant to clauses (i)(b), (xxv) or (xxxii) of this definition), *provided* that any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced;

(xxx) leases, licenses, subleases and sublicenses of assets (including, without limitation, real property and intellectual property rights) which do not materially interfere with the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries;

(xxxi) Liens securing Indebtedness permitted by clauses (xv) and (xviii) of the second paragraph of Section 4.09 and Liens on money escrowed to secure Indebtedness permitted by clause (x) of the second paragraph of Section 4.09;

(xxxii) Liens securing letters of credit in an amount not to exceed \$35.0 million in the aggregate at any one time;

(xxxiii) Liens to secure Capital Lease Obligations;

(xxxiv) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture or any interest acquired pursuant to a Permitted Business Investment;

(xxxv) Liens arising under this Indenture in favor of the Trustee for its own benefit and similar Liens in favor of other trustees, agents and representatives arising under instruments governing Indebtedness permitted to be incurred or outstanding under this Indenture, *provided* that such Liens are solely for the benefit of the trustees, agents and representatives in their capacities as such and not for the benefit of the holders of such Indebtedness; and

(xxxvi) Liens arising from the deposit of funds or securities in trust for the purpose of decreasing or defeasing Indebtedness so long as such deposit of funds or securities and such decreasing or defeasing of Indebtedness are permitted under Section 4.07.

In each case set forth above, notwithstanding any stated limitation on the assets that may be subject to such Lien, a Permitted Lien on a specified asset or group or type of assets may include Liens on all improvements, additions and accessions thereto and all products and proceeds thereof, including dividends, distributions, interest and increases in respect thereof.

“Permitted Mitchell Holders” means (i) Lee Roy Mitchell or Tandy Mitchell, or any descendant of Lee Roy Mitchell or the spouse of any such descendant, the estate of Lee Roy Mitchell, Tandy Mitchell, any descendant of Lee Roy Mitchell or the spouse of any such descendant or any trust or other arrangement for the benefit of Lee Roy Mitchell, Tandy Mitchell, any descendant of Lee Roy Mitchell or the spouse of any such descendant (collectively, the “Mitchell Family”) and (ii) any group which includes any member or members of the Mitchell Family if a majority of the Capital Stock of the Company held by such group is beneficially owned (including the power to vote such Capital Stock of the Company) by such member or members of the Mitchell Family or by one or more Affiliates at least 80% of the equity interests of which are owned by such member or members of the Mitchell Family.

“Permitted Refinancing Indebtedness” means any Indebtedness, Disqualified Stock or preferred stock of the Company or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund other Indebtedness, Disqualified Stock or preferred stock of the Company or any of its Restricted Subsidiaries (other than intercompany Indebtedness); *provided* that:

(i) the principal amount (or accreted value or liquidation preference, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value or liquidation preference, if applicable) of the Indebtedness, Disqualified Stock or preferred stock extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest (or dividends, if applicable) on the Indebtedness, Disqualified Stock or preferred stock and the amount of all expenses, fees and premiums incurred in connection therewith);

(ii) such Permitted Refinancing Indebtedness has a final maturity date later than or equal to the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness, Disqualified Stock or preferred stock being extended, refinanced, renewed, replaced, defeased or refunded;

(iii) if the Indebtedness, Disqualified Stock or preferred stock being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Notes, such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and is subordinated in right of payment to, the Notes on terms at least as favorable to the Holders of Notes as those contained in the documentation governing the Indebtedness, Disqualified Stock or preferred stock being extended, refinanced, renewed, replaced, defeased or refunded; and

(iv) such Indebtedness, Disqualified Stock or preferred stock is incurred or issued either by the Company or any Guarantor or by the Restricted Subsidiary who is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

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

“Pro Forma Cost Savings” means, with respect to any period, the reduction in costs and related adjustments that occurred during the four-quarter reference period or after the end of the four-quarter period and on or prior to the Calculation Date that were (i) directly attributable to an acquisition or disposition and calculated on a basis that is consistent with Regulation S-X under the Securities Act as in effect and applied as of the Issue Date or (ii) implemented, or for which the steps necessary for



implementation have been taken by the Company and are reasonably expected to occur, with respect to the Company or the business that was the subject of any such acquisition or disposition within six months before or after the date of the acquisition or disposition and that are supportable and quantifiable by the underlying accounting records of such business, as if, in the case of each of clause (i) and (ii), all such reductions in costs and related adjustments had been effected as of the beginning of such period.

“QIB” means a “qualified institutional buyer” as defined in Rule 144A.

“Quotation Agent” means the Reference Treasury Dealer selected by the Trustee after consultation with the Company.

“Reference Treasury Dealer” means any three nationally recognized investment banking firms selected by the Company that are primary dealers of Government Securities.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue with respect to the Notes, expressed in each case as a percentage of its principal amount, quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third business day immediately preceding the redemption date.

“Refinancing Transactions” means, collectively, the Refinancing Transactions (as defined in the Offering Memorandum).

“Registration Rights Agreement” means (i) with respect to the Initial Notes issued on the Issue Date, the Exchange and Registration Rights Agreement dated as of December 18, 2012 by and among the Company, the Guarantors and the Initial Purchasers and (ii) with respect to each issuance of Additional Notes issued in a transaction exempt from the registration requirements of the Securities Act, the registration rights agreement, if any, by and among the Company, the Guarantors and the Initial Purchasers under the related purchase agreement.

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

“Regulation S Global Note” means one or more global Notes substantially in the form of Exhibit A hereto bearing the Global Note Legend, the Private Placement Legend, the Regulation S Legend and the ERISA Legend and deposited with or on behalf of and registered in the name of the Depository or its nominee, that shall represent the aggregate principal amount of the Notes sold in reliance on Regulation S.

“Regulation S Legend” means the legend set forth in the second paragraph of Section 2.06(g)(iii) which is required to be placed on all Notes issued pursuant to Regulation S.

“Regulation S Permanent Global Note” means a permanent global note bearing the Global Note Legend, the Private Placement Legend, the Regulation S Legend and the ERISA Legend and deposited with, or on behalf of, and registered in the name of, the Depository or its nominee, that shall equal the outstanding principal amount of the Regulation S Temporary Global Note upon expiration of the Distribution Compliance Period.

“Regulation S Temporary Global Note” means one or more global notes bearing the Global Note Legend, the Regulation S Temporary Global Note Legend, the Private Placement Legend, the Regulation S Legend and the ERISA Legend and deposited with, or on behalf of, and registered in the name of, the Depository or its nominee that shall represent the aggregate principal amount of the Notes sold in reliance on Regulation S.

“Regulation S Temporary Global Note Legend” means the legend set forth in the first paragraph of Section 2.06(g)(iii), which is required to be placed on all Regulation S Temporary Global Notes issued under this Indenture.

“Responsible Officer” means when used with respect to the Trustee, the officer within the Corporate Trust Division of the Trustee (or any successor unit, department or division of the Trustee) located at the Corporate Trust Office of the Trustee, who has direct responsibility for the administration of this Indenture and, for the purposes of Section 7.01(c)(ii) and the second sentence of Section 7.05 shall also include any officer of the Trustee to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject.

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

“Restricted Global Note” means a Global Note substantially in the form of Exhibit A attached hereto that bears the Global Note Legend and the Private Placement Legend and that has the “Schedule of Exchanges of Interests in the Global Note” attached thereto, and that is deposited with or on behalf of and registered in the name of the Depository.

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted Payments Computation Period” means the period (taken as one accounting period) beginning on April 1, 2009 to the end of the Company’s most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment.

“Restricted Subsidiary” of a Person means any Subsidiary of the referent Person (or if no such Person is specified, the Company) that is not an Unrestricted Subsidiary.

“Rule 144” means Rule 144 promulgated under the Securities Act.

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

“Rule 903” means Rule 903 promulgated under the Securities Act.

“Rule 904” means Rule 904 promulgated the Securities Act.

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

“Senior Debt” means, whether outstanding on the Issue Date or thereafter incurred:

(i) all Indebtedness of the Company outstanding under the Credit Agreement, the Existing 2019 Senior Notes and the related subsidiary guarantees and the Notes and the Subsidiary Guarantees;

(ii) any other amounts payable by the Company and its Restricted Subsidiaries under or in respect of Indebtedness of the Company and its Restricted Subsidiaries, unless the instrument under which such Indebtedness is incurred expressly provides that it is subordinated in right of payment to the Notes and the Subsidiary Guarantees, the Existing 2019 Senior Notes and the related subsidiary guarantees or other Senior Debt of the Company or any Guarantor; and

(iii) all Obligations with respect to the items listed in the preceding clauses (i) and (ii) (including any premiums and accrued and unpaid interest and interest accruing on or subsequent to the filing of a petition of bankruptcy or for reorganization relating to the Company or any of its Restricted Subsidiaries at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable law) and fees relating thereto.

Notwithstanding anything to the contrary in the preceding, Senior Debt shall not include:

- (i) any liability for federal, state, local or other taxes owed or owing by the Company or any of its Restricted Subsidiaries;
- (ii) any Indebtedness of the Company to any of its Restricted Subsidiaries or any obligation of a Restricted Subsidiary to the Company or another Restricted Subsidiary;
- (iii) any trade payables arising in the ordinary course of business;
- (iv) any Capital Stock; or
- (v) the portion of any Indebtedness that is incurred in violation of this Indenture (but only to the extent so incurred).

“Senior Secured Leverage Ratio” of any Person means, for any period, the ratio of (a) Net Senior Secured Indebtedness of such Person and its Restricted Subsidiaries as of the date of determination to (b) Consolidated Cash Flow of such Person for the four fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred; in each case with such *pro forma* adjustments to Net Senior Secured Indebtedness and Consolidated Cash Flow as are appropriate and consistent with the *pro forma* adjustments provisions set forth in the definition of “Fixed Charge Coverage Ratio.”

“Shelf Registration Statement” shall have the meaning set forth in the Registration Rights Agreement.

“Significant Subsidiary” means any Subsidiary that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act and the Exchange Act, as such Regulation is in effect on the Issue Date.

“S&P” means Standard & Poor’s Ratings Services and any successor to its rating agency business.

“Start Date” means June 29, 2009.

“Stated Maturity” means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the original documentation governing such Indebtedness, and shall not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

“Subsidiary” means, with respect to any specified Person:

- (i) 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 of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(ii) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

“Subsidiary Guarantee” means, individually, any Guarantee of payment of the Notes and Exchange Notes by a Guarantor pursuant to the terms of this Indenture and any supplemental indenture hereto, and, collectively, all such Guarantees.

“Theatre Completion” means any motion picture theatre or screen which was first opened for business by the Company or a Restricted Subsidiary during any applicable period.

“TIA” means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa 77bbb) as in effect on the date on which this Indenture is qualified under the TIA *provided, however*, that in the event the TIA is amended after such date, “TIA” means, to the extent required by such amendment, the Trust Indenture Act, as so amended.

“Trustee” means the party named as such above until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

“Unrestricted Definitive Note” means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.

“Unrestricted Global Note” means a Global Note substantially in the form of Exhibit A attached hereto that bears the Global Note Legend and that has the “Schedule of Exchanges of Interests in the Global Note” attached thereto, and that is deposited with or on behalf of and registered in the name of the Depositary, representing Notes that do not bear and are not required to bear the Private Placement Legend.

“Unrestricted Subsidiary” means any Subsidiary of the Company that is designated by the Board of Directors of the Company as an Unrestricted Subsidiary pursuant to a resolution of such Board of Directors, but only if such Subsidiary:

(i) has no Indebtedness other than Non-Recourse Debt;

(ii) is not party to any agreement, contract, arrangement or understanding with the Company or any Restricted Subsidiary of the Company unless the terms of any such agreement, contract, arrangement or understanding, taken as a whole, are not materially less favorable to the Company or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Company;

(iii) is a Person with respect to which neither the Company nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person’s financial condition or to cause such Person to achieve any specified levels of operating results;

(iv) has not Guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Company or any of its Restricted Subsidiaries; and

(v) either alone or in the aggregate with all other Unrestricted Subsidiaries, does not operate, directly or indirectly, all or substantially all of the business of the Company and its Subsidiaries.

Any designation of a Subsidiary of the Company as an Unrestricted Subsidiary shall be evidenced to the Trustee by filing with the Trustee a certified copy of the resolution of the Board of Directors of the Company giving effect to such designation and an Officers' Certificate certifying that such designation complied with the preceding conditions and was permitted by Section 4.07 and Section 4.17. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Indebtedness of such Subsidiary shall be deemed to be incurred by a Restricted Subsidiary of the Company as of such date and, if such Indebtedness is not permitted to be incurred as of such date under Section 4.09, the Company shall be in default of such covenant. The Board of Directors of the Company may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that such designation shall be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Company of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation shall only be permitted if (1) such Indebtedness is permitted under Section 4.09, calculated on a pro forma basis as if such designation had occurred at the beginning of the four-quarter reference period; and (2) no Default or Event of Default would be in existence following such designation. As of the Issue Date, the Company's only Unrestricted Subsidiary is Cinemark Media, Inc.

Notwithstanding the foregoing definition and the covenant contained in Section 4.17, if the Company indirectly acquires additional Equity Interests in DCIP pursuant to a merger or acquisition such that DCIP becomes a Subsidiary of the Company, DCIP shall be deemed to be an Unrestricted Subsidiary and the aggregate amount of the Company's and its Restricted Subsidiaries' Investments in DCIP at such date shall be deemed not to be an Investment and shall not reduce the amounts available for Restricted Payments and Permitted Investments; *provided, however*, that any subsequent Investment in DCIP shall be an Investment.

"U.S. Person" means a U.S. person as defined in Rule 902(k) under the Securities Act.

"Voting Stock" of any Person as of any date means the Capital Stock of such Person that is normally entitled to vote in the election of the Board of Directors of such Person.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (b) the number of years (calculated to the nearest one-twelfth) that shall elapse between such date and the making of such payment; by

(ii) the then outstanding principal amount of such Indebtedness.

**SECTION 1.02. Other Definitions.**

<u>Term</u>	<u>Defined in Section</u>
“Affiliate Transaction”	4.11
“Authenticating Agent”	2.02
“Authentication Order”	2.02
“Change of Control Offer”	4.15
“Change of Control Payment”	4.15
“Change of Control Payment Date”	4.15
“Covenant Defeasance”	8.03
“DTC”	2.03
“Event of Default”	6.01
“incur”	4.09
“Legal Defeasance”	8.02
“New Guarantor”	4.16
“Other Indebtedness”	4.16
“Paying Agent”	2.03
“Payment Default”	6.01
“Registrar”	2.03
“Restricted Payments”	4.07

**SECTION 1.03. Incorporation by Reference of TIA.** Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

“indenture securities” means the Notes;

“indenture security holder” means a Holder of a Note;

“indenture to be qualified” means this Indenture;

“indenture trustee” or “institutional trustee” means the Trustee; and

“obligor” on the Notes and the Subsidiary Guarantees means the Company and the Guarantors, respectively, and any successor obligors upon the Notes and the Subsidiary Guarantees, respectively.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by Commission rule under the TIA have the meanings so assigned to them.

**SECTION 1.04. Rules of Construction.** Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) “or” is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;

(5) provisions apply to successive events and transactions;

(6) “herein,” “hereof,” “hereunder” and other words of similar import refer to this Indenture (as amended or supplemented from time to time) and not to any particular Article, Section or other subdivision; and

(7) references to sections of or rules under the Securities Act shall be deemed to include substitute, replacement of successor sections or rules adopted by the Commission from time to time.

## ARTICLE 2.

### THE NOTES

#### **SECTION 2.01. Form and Dating.** (a) General.

The Notes and the Trustee’s certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. The Company and the Trustee shall approve the forms of the Notes and any notation, legend or endorsement on them. Each Note shall be dated the date of its authentication. The Notes shall be in denominations of \$2,000 aggregate principal amount and integral multiples of \$1,000 in excess thereof.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Company, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling. Notes shall be dated the date of their authentication.

Notes issued in global form shall be substantially in the form of Exhibit A attached hereto (including the Global Note Legend thereon and the “Schedule of Exchanges of Interests in the Global Note” attached thereto). Notes issued in definitive form shall be substantially in the form of Exhibit A attached hereto (but without the Global Note Legend thereon and without the “Schedule of Exchanges of Interests in the Global Note” attached thereto).

#### (b) Global Notes.

Each Global Note shall represent such of the outstanding Notes as shall be specified therein and each shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee, the Depository or the Note Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06.

#### (c) Temporary Global Notes.

Notes offered and sold in reliance on Regulation S shall be issued initially in the form of the Regulation S Temporary Global Note, which shall bear the Regulation S Temporary Global Note Legend and which shall be deposited on behalf of the purchasers of the Notes represented thereby with the

Trustee, as custodian for the Depository, and registered in the name of the Depository or the nominee of the Depository for the accounts of designated agents holding on behalf of Euroclear or Clearstream, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The Distribution Compliance Period shall be terminated upon the receipt by the Trustee of (i) a written certificate from the Depository, together with copies of certificates from Euroclear and Clearstream certifying that they have received certification of non-United States beneficial ownership of 100% of the aggregate principal amount of the Regulation S Temporary Global Note (except to the extent of any beneficial owners thereof who acquired an interest therein during the Distribution Compliance Period pursuant to another exemption from registration under the Securities Act and who shall take delivery of a beneficial ownership interest in a 144A Global Note bearing a Private Placement Legend and the ERISA Legend all as contemplated by Section 2.06(b)(iii)), and (ii) an Officers' Certificate from the Company. Following the termination of the Distribution Compliance Period, beneficial interests in the Regulation S Temporary Global Note shall be exchanged for beneficial interests in Regulation S Permanent Global Notes pursuant to the Applicable Procedures. Simultaneously with the authentication of Regulation S Permanent Global Notes, the Trustee shall cancel the Regulation S Temporary Global Note. The aggregate principal amount of the Regulation S Temporary Global Note and the Regulation S Permanent Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

(d) Euroclear and Clearstream Procedures Applicable.

The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream" and "Customer Handbook" of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Temporary Global Note and the Regulation S Permanent Global Notes that are held by Participants through Euroclear or Clearstream.

**SECTION 2.02. Execution and Authentication.** An Officer of the Company shall sign the Notes for the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall nevertheless be valid.

A Note shall not be valid until an authorized signatory of the Trustee manually authenticates the Note. The signature of the Trustee on a Note shall be conclusive evidence that the Note has been duly and validly authenticated and issued under this Indenture.

The Trustee shall, upon a written order of the Company signed by two Officers of the Company or by an Officer and an Assistant Secretary of the Company (the "Authentication Order"), authenticate (i) on the Issue Date \$400,000,000 in aggregate principal amount of Notes, (ii) at any time and from time to time thereafter, Additional Notes (subject to the provisions of Section 2.13) in an aggregate principal amount specified in such Authentication Order and (iii) Exchange Notes issued in exchange for a like principal amount of Initial Notes or Additional Notes tendered pursuant to an Exchange Offer. Such Authentication Order shall specify (i) the amount of the Notes to be authenticated, (ii) the date on which the Notes are to be authenticated, (iii) whether the Notes are to be Initial Notes, Exchange Notes or Additional Notes and (iv) whether such Notes shall bear the Global Note Legend, the ERISA Legend, the Regulation S Legend, the Regulation S Temporary Global Note Legend and/or the Private Placement Legend.

The Trustee may appoint an authenticating agent (the "Authenticating Agent") acceptable to the Company to authenticate Notes. An Authenticating Agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such Authenticating Agent. An Authenticating Agent has the same rights as an Agent to deal with the Company or an Affiliate of the Company.



**SECTION 2.03. Registrar and Paying Agent.** The Company shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange (“Registrar”) and an office or agency where Notes may be presented for payment (“Paying Agent”). The Company shall cause each of the Registrar and the Paying Agent to maintain an office or agency in the Borough of Manhattan, The City of New York. The Registrar shall keep a register of the Notes and of their transfer and exchange. The Company may appoint one or more co-registrars and one or more additional paying agents. The term “Registrar” includes any co-registrar and the term “Paying Agent” includes any additional paying agent. The Company may change any Paying Agent or Registrar without prior notice to any Holder. The Company shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any of its Subsidiaries may act as Paying Agent or Registrar.

The Company initially appoints The Depository Trust Company (“DTC”) to act as Depository with respect to the Global Notes.

The Company initially appoints the Trustee to act as the Registrar and Paying Agent. The Trustee shall act as Note Custodian with respect to the Global Notes in accordance with its agreement with DTC.

**SECTION 2.04. Paying Agent to Hold Money in Trust.** By no later than 11:00 a.m. (New York City time) on the date on which any principal of or interest on any Notes is due and payable, the Company shall deposit with the Paying Agent a sum sufficient in immediately available funds to pay such principal or interest when due. The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal of or premium, if any, Additional Interest, if any, or interest on the Notes, and shall notify the Trustee in writing of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary) shall have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Company, the Trustee shall serve as Paying Agent for the Notes.

**SECTION 2.05. Holder Lists.** The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least seven Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes and the Company shall otherwise comply with TIA § 312(a).

**SECTION 2.06. Transfer and Exchange.** (a) Transfer and Exchange of Global Notes. A Global Note may not be transferred as a whole except by the Depository to a nominee of the Depository, by a nominee of the Depository to the Depository or to another nominee of the Depository, or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository. All Global Notes shall be exchanged by the Company for Definitive Notes if (i) the Company delivers to the Trustee notice from the Depository that it is unwilling or unable to continue to act as Depository or that it

is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depositary is not appointed by the Company within 120 days after the date of such notice from the Depositary, (ii) the Company in its sole discretion determines that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee; or (iii) there shall have occurred and be continuing a Default or Event of Default with respect to the Notes; *provided* that in no event shall the Regulation S Temporary Global Note be exchanged by the Company for Definitive Notes prior to (x) the expiration of the Distribution Compliance Period and (y) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act. Upon the occurrence of any of the preceding events in (i), (ii) or (iii) above, Definitive Notes shall be issued in such names as the Depositary shall instruct the Trustee. Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07, 2.10 and 9.05. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Sections 2.07 or 2.10 or 9.05, shall be authenticated and delivered in the form of, and shall be, a Global Note. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a); *however*, beneficial interests in a Global Note may be transferred and exchanged as provided in Sections 2.06(b), (c) or (f).

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

(i) Transfer of Beneficial Interests in the Same Global Note Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend and any Applicable Procedures; *provided, however*, that prior to the expiration of the Distribution Compliance Period, transfers of beneficial interests in the Temporary Regulation S Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser or a “distributor” (as defined in Rule 902(d) of Regulation S)). Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. Except as may be required by Applicable Procedures, no written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Notes In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(i) above, the transferor of such beneficial interest must deliver to the Registrar either (A) (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase or (B) if permitted under Section 2.06(a), (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depositary to the

Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (B)(1) above; *provided* that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Regulation S Temporary Global Note prior to (x) the expiration of the Distribution Compliance Period and (y) the receipt by the Registrar of any certificates required pursuant to Rule 903 under the Securities Act. Upon consummation of an Exchange Offer by the Company in accordance with Section 2.06(f), the requirements of this Section 2.06(b)(ii) shall be deemed to have been satisfied upon receipt by the Registrar of the instructions contained in the Letter of Transmittal delivered by the Holder of such beneficial interests in the Restricted Global Notes. Upon notification from the Registrar that all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act have been satisfied, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(h).

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

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

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

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

(A) such exchange or transfer is effected pursuant to an Exchange Offer in accordance with a Registration Rights Agreement and the holder of the beneficial interest to be transferred, in the case of an exchange, or the transferee, in the case of a transfer, makes any and all certifications in the applicable Letter of Transmittal or is deemed to have made such certifications if delivery is made through the Applicable Procedures as may be required by the Registration Rights Agreement;

(B) such transfer is effected pursuant to a Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Broker-Dealer participating in the Exchange Offer pursuant to an Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar and the Company receive the following:

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

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

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

If any such transfer is effected pursuant to subparagraph (B) or (D) above at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof or in accordance with a previously delivered Authentication Order, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (B) or (D) above.

(v) Transfer or Exchange of Beneficial Interests in Unrestricted Global Notes for Beneficial Interests in Restricted Global Notes Prohibited Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, beneficial interests in a Restricted Global Note.

(c) Transfer or Exchange of Beneficial Interests in Global Notes for Definitive Notes

(i) Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes Subject to Section 2.06(a), if any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon receipt by the Registrar and the Company of the following documentation:

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

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

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

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

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

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

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h), and the Company shall execute and upon receipt of an Authentication Order in accordance with Section 2.02 or in accordance with a previously delivered Authentication Order, the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depository and the Participant or Indirect Participant. The Trustee shall deliver such Restricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c)(i) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(ii) Beneficial Interests in Regulation S Temporary Global Notes to Definitive Notes Notwithstanding Sections 2.06(c)(i)(A) and (C) hereof, a beneficial interest in the Regulation S Temporary Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (x) the expiration of the Distribution Compliance Period and (y) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(iii) Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes Subject to Section 2.06(a) hereof, a holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only if:

(A) such exchange or transfer is effected pursuant to an Exchange Offer in accordance with the Registration Rights Agreement and the holder of such beneficial interest, in the case of an exchange, or the transferee, in the case of a transfer, makes any and all certifications in the applicable Letter of Transmittal;

(B) such transfer is effected pursuant to a Shelf Registration Statement in accordance with the Registration Rights Agreement;  
(C) such transfer is effected by a Broker-Dealer participating in the Exchange Offer pursuant to an Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar and the Company receive the following:

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

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

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

Upon satisfaction of the conditions of any of the clauses of this Section 2.06(c)(iii), the Company shall execute, and, upon receipt of an Authentication Order in accordance with Section 2.02 or in accordance with a previously delivered Authentication Order, the Trustee shall authenticate and deliver to the Person designated in the instructions an Unrestricted Definitive Note in the appropriate principal amount, and the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Note to be reduced in a corresponding amount pursuant to Section 2.06(h).

(iv) Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes Subject to Section 2.06(a), if any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note, then, upon satisfaction of the applicable conditions set forth in Section 2.06(b)(ii), the Trustee shall cause the aggregate principal amount of the applicable Unrestricted Global Note to be reduced accordingly pursuant to Section 2.06(h), and the Company shall execute and, upon receipt of an Authentication Order in accordance with Section 2.02 or in accordance with a previously delivered Authentication Order, the Trustee shall authenticate and deliver to the Person designated in the instructions an Unrestricted Definitive Note in the appropriate principal amount. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iv) shall be registered in such name or

names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depository and the Participant or Indirect Participant. The Trustee shall deliver such Unrestricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(e)(iv) shall not bear the Private Placement Legend.

(d) Transfer and Exchange of Definitive Notes for Beneficial Interests in Global Notes

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

- (A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;
- (B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;
- (C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;
- (D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;
- (E) if such Restricted Definitive Note is being transferred to either of the Company or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or
- (F) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

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

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

(A) such exchange or transfer is effected pursuant to an Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, makes any and all certifications in the applicable Letter of Transmittal;

(B) such transfer is effected pursuant to a Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Broker-Dealer participating in the Exchange Offer pursuant to an Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar and the Company receives the following:

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

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

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

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

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

(iv) Transfer or Exchange of Unrestricted Definitive Notes to Beneficial Interests in Restricted Global Notes Prohibited An Unrestricted Definitive Note may not be exchanged for, or transferred to Persons who take delivery thereof in the form of, beneficial interests in a Restricted Global Note.



(v) Issuance of Unrestricted Global Notes. If any such exchange or transfer from a Definitive Note to a beneficial interest in an Unrestricted Global Note is effected pursuant to subparagraphs (ii)(B), (ii)(D) or (iii) above at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 or in accordance with a previously delivered Authentication Order, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

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

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

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

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

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

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

(A) such exchange or transfer is effected pursuant to an Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, makes any and all certifications in the applicable Letter of Transmittal;

(B) any such transfer is effected pursuant to a Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) any such transfer is effected by a Broker-Dealer participating in the Exchange Offer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar and the Company receive the following:

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

(2) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof; and, in each such case set forth in this subparagraph (D), an Opinion of Counsel in form reasonably acceptable to the Company to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the clauses of Section 2.06(e)(ii), the Trustee shall cancel the prior Restricted Definitive Note and the Company shall execute, and, upon receipt of an Authentication Order in accordance with Section 2.02 or in accordance with a previously delivered Authentication Order, the Trustee shall authenticate and deliver to the Person designated in the instructions an Unrestricted Definitive Note in the appropriate principal amount.

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

(f) Exchange Offer. Upon the occurrence of an Exchange Offer in accordance with a Registration Rights Agreement, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02, the Trustee shall authenticate (i) one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of the beneficial interests in the applicable Restricted Global Notes tendered for acceptance by Persons that make any and all certifications in the applicable Letter of Transmittal or are deemed to have made such certifications if delivery is made through the Applicable Procedures as may be required by such Registration Rights Agreement and accepted for exchange in the Exchange Offer and (ii) Unrestricted Definitive Notes in an aggregate principal amount equal to the principal amount of the Restricted Definitive Notes tendered for acceptance by Persons who made the foregoing certifications and accepted for exchange in the Exchange Offer. Concurrently with the issuance of such Notes, the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Notes to be reduced accordingly, and the Company shall execute and the Trustee shall authenticate and deliver to the Persons designated by the Holders of Restricted Definitive Notes so accepted Unrestricted Definitive Notes in the appropriate principal amount.

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

(i) Private Placement Legend.

(A) Except as permitted by subparagraph (B) below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the applicable legend set forth under clauses (1) and (2) below in substantially the following forms:

(1) “THE NOTES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS NOTE, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED NOTES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH NOTE, ONLY (A) TO THE COMPANY, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME OR HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES IN ACCORDANCE WITH REGULATIONS UNDER THE SECURITIES ACT, (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY’S AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (C), (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER ONE YEAR FROM THE LATER OF (i) THE LAST DATE THAT THE COMPANY OR ANY OF ITS AFFILIATES WAS THE OWNER OF THE NOTES OR ANY PREDECESSOR OF THE NOTES, (ii) THE DATE OF ISSUE OF THESE NOTES AND (iii) THE ISSUE DATE OF ANY ADDITIONAL NOTES.”

(2) “THE NOTES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION, AND MAY NOT BE OFFERED, SOLD OR DELIVERED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON, UNLESS SUCH NOTES ARE REGISTERED UNDER THE SECURITIES ACT OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS THEREOF IS AVAILABLE. THIS LEGEND WILL BE REMOVED AFTER THE EXPIRATION OF FORTY DAYS FROM THE LATER OF (i) THE LAST DATE THAT THE COMPANY OR ANY OF ITS AFFILIATES WAS THE OWNER OF THE NOTES OR ANY PREDECESSOR OF THE NOTES, (ii) THE DATE OF ISSUE OF THESE NOTES AND (iii) THE ISSUE DATE OF ANY ADDITIONAL NOTES.”

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

(ii) Global Note Legend. Each Global Note shall bear a legend in substantially the following form:

“UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY, OR BY ANY SUCH NOMINEE OF THE DEPOSITARY, OR BY THE DEPOSITARY OR NOMINEE OF A SUCCESSOR DEPOSITARY, OR ANY NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. TRANSFERS OF THE GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO., OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE, AND TRANSFERS OF PORTIONS OF THE GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE.”

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

(iii) Regulation S Legends. The Regulation S Temporary Global Note shall bear a legend in substantially the following form:

“THIS NOTE IS A TEMPORARY GLOBAL NOTE. PRIOR TO THE EXPIRATION OF THE RESTRICTED PERIOD APPLICABLE HERETO, BENEFICIAL INTERESTS HEREIN MAY NOT BE HELD BY ANY PERSON OTHER THAN (A) A NON-U.S. PERSON OR (B) A U.S. PERSON THAT PURCHASED SUCH INTEREST IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”). BENEFICIAL INTERESTS HEREIN ARE NOT EXCHANGEABLE FOR CERTIFICATED NOTES OTHER THAN A PERMANENT GLOBAL NOTE IN ACCORDANCE WITH THE TERMS OF THE INDENTURE. TERMS IN THIS LEGEND ARE USED AS USED IN REGULATIONS UNDER THE SECURITIES ACT.”

All Notes issued or exchanged under this Indenture pursuant to Regulation S shall bear a legend in substantially the following form:

“BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON, NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON, AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATIONS UNDER THE SECURITIES ACT.”

(iv) ERISA Legend. Each Note issued or exchanged under this Indenture shall bear a legend in substantially the following form:

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

(h) Cancellation and/or Adjustment of Global Notes. At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person

who shall take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who shall take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(i) General Provisions Relating to Transfers and Exchanges

(i) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon the Company's order.

(ii) No service charge shall be made to a holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10, 3.06, 4.15 and 9.05).

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

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

(v) The Company and the Registrar shall not be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 and ending at the close of business on the day of selection or (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(vi) The Trustee, any Agent and the Company may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Company shall be affected by notice to the contrary.

(vii) The Trustee shall authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02.

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

(ix) Subject to compliance with any applicable additional requirements contained in this Article, when a Note is presented to the Registrar with a request to register a transfer thereof or to exchange such Note for an equal principal amount of Notes of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested; *provided, however*, that every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by an assignment form and, if applicable, a transfer certificate, each in the form included in Exhibit A attached hereto and in form satisfactory to the Registrar and each duly executed by the Holder thereof or its attorney duly authorized in writing. To permit registration of transfers and exchanges, upon surrender of any Note for registration of transfer or exchange at an office or agency maintained for such purpose pursuant to Section 2.03, the Company shall execute, and the Trustee shall authenticate, Notes of a like aggregate principal amount at the Registrar's request.

(x) Any Registrar appointed pursuant to Section 2.03 shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Notes upon transfer or exchange of Notes.

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

(xii) None of the Company, the Trustee or any Paying Agent shall have any responsibility or liability for any aspect of the records relating to, or payments made on account of or transfers of, beneficial ownership interests in a Global Note or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

(xiii) None of the Company, the Trustee or the Registrar shall have any liability for any acts or omissions of the Depositary, for any Depositary records of beneficial interests, for any transaction between the Depositary or any Participant and/or beneficial owners, for any transfers of beneficial interests in the Notes, or in respect of any transfers effected by the Depositary or by any Participant or any beneficial owner of any interest in any Notes held through any such Participant.

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**SECTION 2.07. Replacement Notes.** If any mutilated Note is surrendered to the Trustee or the Company and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Company shall issue and the Trustee, upon receipt of an Authentication Order or in accordance with a previously delivered Authentication Order, shall authenticate a replacement Note if the Company's and the Trustee's requirements are met. If required by the Trustee or the Company, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent and any Authenticating Agent from any loss that any of them may suffer if a Note is replaced. The Company and the Trustee may charge for their expenses in replacing a Note.

Every replacement Note issued in accordance with this Section 2.07 is an additional obligation of the Company and any other obligor upon the Notes and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

In the event any such mutilated, lost, destroyed or wrongfully taken Note has become or is about to become due and payable, the Company in its discretion may pay such Note instead of issuing a new Note in replacement thereof.

The provisions of this Section 2.07 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, lost, destroyed or wrongfully taken Notes.

**SECTION 2.08. Outstanding Notes.** The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

If a Note is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the principal amount of any Note is considered paid under Section 4.01, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.



**SECTION 2.09. Treasury Notes.** In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company, or by any Affiliate of the Company, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded.

**SECTION 2.10. Temporary Notes.** Until certificates representing Notes are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Company considers appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate definitive Notes in exchange for temporary Notes.

Holders of temporary Notes shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

**SECTION 2.11. Cancellation.** The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall dispose canceled Notes in accordance with customary practices (subject to the record retention requirement of the Exchange Act). Certification of the disposal of all canceled Notes shall be delivered to the Company from time to time upon written request. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

**SECTION 2.12. Defaulted Interest.** If the Company defaults in a payment of interest on the Notes, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01. The Company shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment. The Company shall fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date shall be less than ten days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company) shall send or cause to be sent to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

**SECTION 2.13. Issuance of Additional Notes.**

The Company shall be entitled, subject to its compliance with Section 4.09, to issue Additional Notes under this Indenture which shall have identical terms as the Initial Notes issued on the Issue Date or the Exchange Notes issued in exchange for the Initial Notes, other than with respect to the date of issuance and issue price, first payment of interest and rights under a related Registration Rights Agreement, if any.

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

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

(b) the issue price, the issue date and the CUSIP number and corresponding ISIN of such Additional Notes; and

(c) whether such Additional Notes shall be issued in the form of Initial Notes as set forth in Exhibit A to this Indenture or shall be issued in the form of Exchange Notes as set forth in Exhibit A to this Indenture.

**SECTION 2.14. One Class of Securities.**

The Initial Notes issued on the Issue Date, all Exchange Notes issued in exchange therefor and any Additional Notes shall be treated as a single class for all purposes under this Indenture.

**SECTION 2.15. CUSIP, ISIN or Other Similar Numbers.**

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

ARTICLE 3.

REDEMPTION AND PREPAYMENT

**SECTION 3.01. Notices to Trustee.** If the Company elects to redeem Notes pursuant to the optional redemption provisions of Section 3.07, the Company shall furnish to the Trustee, at least 45 days but not more than 60 days (unless a shorter period is acceptable to the Trustee) before a redemption date, an Officers' Certificate setting forth (i) the clause of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Notes to be redeemed and (iv) the redemption price (expressed as a percentage or principal amount).

**SECTION 3.02. Selection of Notes to Be Redeemed.** If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee shall select the Notes to be redeemed or purchased among the Holders of the Notes in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not so listed, on a pro rata basis (and in the case of Global Notes, on as near a pro rata basis as practical, subject to the applicable procedures of the Depository), by lot, at random or in accordance with any other method the Trustee shall deem fair and appropriate; *provided* that no Notes of \$2,000 in aggregate principal amount or less shall be redeemed in part. In the event of partial redemption by lot or at random, the particular Notes to be redeemed shall be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption date by the Trustee from the outstanding Notes not previously called for redemption.

The Trustee shall promptly notify the Company in writing of the Notes selected for redemption and, in the case of any Note selected for partial redemption, the principal amount thereof to be redeemed. Notes and portions of Notes selected shall be in amounts of \$2,000 or whole multiples of \$1,000 in excess thereof; except that if all of the Notes of a Holder are to be redeemed, the entire outstanding amount of Notes held by such Holder, even if not in a minimum amount of \$2,000 or a multiple of \$1,000 in excess thereof, shall be redeemed. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

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**SECTION 3.03. Notice of Redemption.** At least 30 days but not more than 60 days before a redemption date, the Company shall send a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be sent more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture.

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

- (a) the redemption date;
- (b) the redemption price;
- (c) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Note;
- (d) the name and address of the Paying Agent;
- (e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (f) that, unless the Company defaults in making such redemption payment, interest and Additional Interest, if any, on Notes called for redemption ceases to accrue on and after the redemption date;
- (g) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and
- (h) that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, if any, listed in such notice or printed on the Notes.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense *provided, however*, that the Company shall have delivered to the Trustee, at least 45 days prior to the redemption date (unless a shorter period is acceptable to the Trustee), an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

**SECTION 3.04. Effect of Notice of Redemption.** Once the notice of redemption is sent in accordance with Section 3.03, Notes called for redemption shall become irrevocably due and payable on the redemption date at the redemption price. A notice of redemption may not be conditional.

**SECTION 3.05. Deposit of Redemption Price.** Prior to 11:00 a.m. New York City time on the redemption date, the Company shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption price of and accrued interest and Additional Interest, if any, on all Notes to be redeemed on that date. Subject to applicable abandoned property laws, the Trustee or the Paying Agent shall promptly, upon request, return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption price of, and accrued interest and Additional Interest on, all Notes to be redeemed.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption. If a Note is redeemed on or after an interest payment record date but on or prior to the related interest payment date, then any accrued and unpaid interest and Additional Interest, if any, shall be paid to the Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption shall not be so paid upon surrender for redemption because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01.

**SECTION 3.06. Notes Redeemed in Part.** Upon surrender of a Note that is redeemed in part, the Company shall issue and, upon receipt of an Authentication Order, the Trustee shall authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed portion of the Note surrendered.

**SECTION 3.07. Optional Redemption.** Except as described in this Section 3.07, the Notes will not be redeemable at the Company's option prior to December 15, 2017.

(a) At any time prior to December 15, 2015, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under this Indenture (including any Additional Notes) at a redemption price of 105.125% of the principal amount thereof, plus accrued and unpaid interest and Additional Interest, if any, to the redemption date, with funds in an amount equal to the net cash proceeds of one or more Equity Offerings by the Company, *provided that*:

(i) at least 65% of the principal amount of Notes issued under this Indenture (including any Additional Notes) remains outstanding immediately after the occurrence of such redemption (excluding Notes held by the Company or any of its Subsidiaries); and

(ii) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(b) On and after December 15, 2017, the Company may redeem all or a part of the Notes at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest and Additional Interest, if any, on the Notes redeemed, to the applicable redemption date, if redeemed during the 12-month period beginning on December 15 of the years indicated below:

<u>YEAR</u>	<u>Percentage</u>
2017	102.563%
2018	101.708%
2019	100.854%
2020 and thereafter	100.000%

(c) At any time and from time to time prior to December 15, 2017, the Company may, at its option, redeem all or a portion of the Notes at a redemption price equal to 100% of the principal amount thereof plus the Applicable Premium with respect to the Notes plus accrued and unpaid interest and Additional Interest, if any, thereon to the redemption date. Notice of redemption need not set forth the Applicable Premium but only the manner of calculation of the redemption price. With respect to any such redemption, the Company shall notify the Trustee of the Applicable Premium with respect to the Notes promptly after the calculation and the Trustee shall not be responsible for such calculation.

**SECTION 3.08. Mandatory Redemption.**

The Company shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

ARTICLE 4.

COVENANTS

**SECTION 4.01. Payment of Notes.** The Company shall pay or cause to be paid the principal of or premium, if any, Additional Interest, if any, or interest on the Notes on the dates, at the location and in the manner provided in the Notes and this Indenture. Principal, premium, if any, interest and Additional Interest, if any, shall be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 11:00 a.m. Eastern Time on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal of or premium, if any, Additional Interest, if any, or interest on the Notes then due. The Company shall pay all Additional Interest, if any, in the same manner on the dates and in the amounts set forth in the Registration Rights Agreement at the location specified in the Notes.

The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at the then applicable interest rate on the Notes; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest and Additional Interest, if any, (without regard to any applicable grace period) from time to time on demand at the same rate to the extent lawful.

The Company shall make all interest, premium, if any, Additional Interest, if any, and principal payments by wire transfer of immediately available funds to any Holder who shall have given written directions to the Company or the Paying Agent to make such payments by wire transfer pursuant to the wire transfer instructions supplied to the Company or the Paying Agent by such Holder on or prior to the applicable record date. All other payments on Notes will be made at the office or agency of the Paying Agent and Registrar within the City and State of New York unless the Company elects to make interest payments by check mailed to the Holders at their address set forth in the register of Holders.

**SECTION 4.02. Maintenance of Office or Agency.** The Company shall maintain in the Borough of Manhattan, The City of New York, an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of

transfer or for exchange and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the New York Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03.

**SECTION 4.03. Reports.** Whether or not required by the Commission, so long as any Notes are outstanding, the Company shall furnish to the Trustee and the Holders of Notes, within the time periods specified in the Commission's rules and regulations (including all applicable extensions):

(i) all quarterly and annual financial information that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K if the Company were required to file such Forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual information only, a report on the annual financial statements by the Company's independent auditors; and

(ii) all current reports that would be required to be filed with the Commission on Form 8-K if the Company were required to file such reports.

If the Company has designated any of its Subsidiaries as Unrestricted Subsidiaries, then the quarterly and annual financial information required by the preceding paragraph shall include an unaudited consolidating balance sheet and related statements of income and cash flows for the Company and its Subsidiaries, separately identifying (a) the Company and the Restricted Subsidiaries and (b) the Unrestricted Subsidiaries, in all reports containing the consolidated financial statements (which in the case of annual reports shall be audited) of the Company and its consolidated Subsidiaries.

In addition, following the consummation of the Exchange Offer contemplated by the Registration Rights Agreement, whether or not required by the Commission, the Company shall file a copy of all of the information and reports referred to in clauses (i) and (ii) above with the Commission for public availability within the time periods specified in the Commission's rules and regulations after giving effect to all applicable extensions (unless the Commission will not accept such a filing) and make such information available to securities analysts and prospective investors upon request. In addition, the Company has agreed that, for so long as any Notes remain outstanding, it shall furnish to the Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

The Company shall be deemed to have furnished such reports to the Trustee and the Holders if it has filed such reports with the Commission using the EDGAR filing system and such reports are publicly available.

Notwithstanding anything herein to the contrary, the Company shall be deemed not to have failed to comply with any of its obligations hereunder for purposes of clause (v) under Section 6.01 until 120 days after the date any report hereunder is required to be made available to the Trustee and the Holders pursuant to this Section 4.03 or Section 314(a) of the TIA.

The Company also shall comply with the other provisions of TIA Section 314(a). Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's and the Guarantors' compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely conclusively on Officers' Certificates). The Trustee shall have no duty or responsibility to review such reports, information or documents.

**SECTION 4.04. Compliance Certificate.** (a) The Company shall deliver to the Trustee, within 90 days after the end of each fiscal year of the Company, an Officers' Certificate stating that a review of the activities of the Company and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto).

(b) The Company shall, so long as any of the Notes are outstanding, deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

**SECTION 4.05. Taxes.** The Company shall pay or discharge or cause to be paid or discharged, before the same shall become delinquent all material taxes, assessments, and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary, except such as are contested in good faith and by appropriate proceedings or where the failure to pay or discharge the same would not have a material adverse effect on the ability of the Company to perform its obligations under the Notes or this Indenture.

**SECTION 4.06. Stay, Extension and Usury Laws.** The Company and each of the Guarantors covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

**SECTION 4.07. Restricted Payments.** The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any other payment or distribution on account of the Company's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Company or any of its Restricted

Subsidiaries) or to the direct or indirect holders of the Company's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends or distributions payable (a) in Equity Interests (other than Disqualified Stock) of the Company or (b) to the Company or a Restricted Subsidiary of the Company);

(2) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Company) any Equity Interests of the Company or any Parent Entity held by Persons other than the Company or a Restricted Subsidiary (other than in exchange for Capital Stock of the Company (other than Disqualified Stock));

(3) make any payment of principal on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness (other than any Indebtedness of the Company owing to and held by a Guarantor or Indebtedness of a Guarantor owing to and held by the Company or any other Guarantor permitted under this Indenture) that is subordinated to the Notes or the Subsidiary Guarantees, if any, except a payment of principal at the Stated Maturity thereof, other than any purchase, repurchase, redemption, defeasance or other acquisition or retirement of any such Indebtedness made in anticipation of a sinking fund obligation, principal installment or final maturity, in each case, within one year of the date of such purchase, repurchase, redemption, defeasance or other acquisition or retirement; or

(4) make any Restricted Investment (all such payments and other actions set forth in these clauses (1) through (4) above being collectively referred to as "Restricted Payments"),

unless, at the time of and after giving effect to such Restricted Payment:

(i) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment; and

(ii) the Company would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of Section 4.09; and

(iii) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and its Restricted Subsidiaries since the Start Date (including Restricted Payments permitted by clauses (i), (ix), (xii) and (xiii) of the next succeeding paragraph, but excluding all other Restricted Payments permitted by the next succeeding paragraph; all payment calculations being made as if this Section 4.07 had been in effect as of the Start Date and at all times thereafter), is less than the sum, without duplication, of:

(a) (i) Consolidated Cash Flow of the Company and its Restricted Subsidiaries on a consolidated basis for the Restricted Payments Computation Period, minus

(ii) (A) for the period from the Start Date to March 31, 2011, 2.0 and (B) thereafter, 1.7, multiplied by Fixed Charges of the Company and its Restricted Subsidiaries on a consolidated basis for the Restricted Payments Computation Period, *plus*

(b) 100% of the aggregate net cash proceeds and the fair market value of marketable securities and other property received by the Company or any Guarantor since immediately after the Start Date from the sale of:



(i) (A) Equity Interests of the Company, excluding cash proceeds and the fair market value of marketable securities or other property received from the sale of Equity Interests to members of management, directors or consultants of the Company, any Parent Entity and the Company's Subsidiaries after the Start Date to the extent such amounts have been applied to Restricted Payments made in accordance with clause (v) of the next succeeding paragraph; and

(B) to the extent such net cash proceeds or marketable securities or other property are actually contributed to the Company, Equity Interests of the Parent Entities (excluding contributions to the extent such amounts have been applied to Restricted Payments made in accordance with clause (v) of the next succeeding paragraph); or

(ii) debt securities of the Company that have been converted into or exchanged for such Equity Interests of the Company (or any Parent Entity);

*provided, however*, that this clause (b) shall not include the proceeds from (X) Equity Interests or convertible debt securities of the Company sold to a Restricted Subsidiary, (Y) Disqualified Stock or debt securities that have been converted into Disqualified Stock or (Z) Excluded Contributions or Equity Interests used to make a Permitted Investment pursuant to clause (viii) of the definition of Permitted Investments; plus

(c) 100% of the aggregate amount of cash and the fair market value of marketable securities or other property contributed to the capital of the Company following the Start Date (other than by a Restricted Subsidiary and other than by any Excluded Contributions); *plus*

(d) 100% of the aggregate amount received in cash and the fair market value of marketable securities or other property received after the Start Date by means of:

(i) the sale or other disposition (other than to the Company or a Restricted Subsidiary) of Restricted Investments made by the Company or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Company or its Restricted Subsidiaries and repayments of loans or advances, and releases of Guarantees and other liabilities (other than contingent liabilities), which constitute Restricted Investments by the Company or its Restricted Subsidiaries, in each case after the Start Date; or

(ii) the sale (other than to the Company or a Restricted Subsidiary) of the Equity Interests of an Unrestricted Subsidiary (other than to the extent the Investment in such Unrestricted Subsidiary constituted a Permitted Investment) or a dividend or distribution from an Unrestricted Subsidiary after the Start Date; *plus*

(e) in the case of the designation of an Unrestricted Subsidiary as a Restricted Subsidiary after the Start Date, the fair market value of the Company's and its Restricted Subsidiaries' aggregate interests in such Unrestricted Subsidiary (which, if the fair market value of such interests (other than the value attributable to marketable securities held by such Unrestricted Subsidiary) exceeds \$50.0 million, shall be set forth in writing by an accounting, appraisal or investment banking firm of national standing or determined by the Company's Board of Directors) at the time of the designation of such Unrestricted Subsidiary as a Restricted Subsidiary, other than the amount of the Investments in such Unrestricted Subsidiary made after the Start Date as Permitted Investments hereunder; *plus*

(f) \$300.0 million.

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The preceding provisions shall not prohibit:

(i) the payment of any dividend or distribution within 60 days after the date of declaration thereof, if at the date of declaration the dividend or distribution payment would have complied with the provisions of this Indenture;

(ii) the payment of principal on or with respect to, or the purchase, redemption, repurchase, retirement, defeasance or other acquisition of, any Indebtedness subordinated to the Notes or any Subsidiary Guarantee or of any Equity Interests of the Company or any Parent Entity made by conversion into, in exchange for, or out of the proceeds of the substantially concurrent (a) sale (other than to a Subsidiary of the Company or constituting an Excluded Contribution or Equity Interests used to make a Permitted Investment pursuant to clause (viii) of the definition of Permitted Investments) of, Equity Interests of the Company (other than Disqualified Stock and other than Equity Interests issued or sold to an employee stock ownership plan or similar trust to the extent such sale to an employee stock ownership plan or similar trust is financed by loans from or guaranteed by the Company or any Restricted Subsidiary unless such loans have been repaid with cash on or prior to the date of determination) or any Parent Entity or (b) contribution to the capital of the Company (other than by a Subsidiary and other than constituting an Excluded Contribution); *provided* that the amount of any such proceeds that are utilized for any such payment, purchase, redemption, repurchase, retirement, defeasance or other acquisition shall be excluded from clauses (iii)(b) and (iii)(c) of the preceding paragraph;

(iii) the payment of principal on or with respect to, or the purchase, defeasance, redemption, repurchase or other acquisition or retirement of, Indebtedness subordinated to the Notes or any Subsidiary Guarantee with the proceeds from an incurrence of, or in exchange for, Permitted Refinancing Indebtedness that is permitted to be incurred pursuant to Section 4.09;

(iv) the declaration and payment of any dividend or distribution by a Restricted Subsidiary of the Company to the holders of its Capital Stock on a pro rata basis;

(v) the purchase, redemption or other acquisition or retirement for value of any Equity Interests of the Company or any Parent Entity held by any current or former employee, director or consultant of the Company, any Parent Entity or any of the Company's Restricted Subsidiaries (or any permitted transferee of any of the foregoing) pursuant to any management equity subscription agreement, stock option agreement, stock plan or similar agreement; *provided* that the aggregate price paid for all such purchased, redeemed, acquired or retired Equity Interests may not exceed \$7.5 million in any 12-month period (with unused amounts in any 12-month period after the Start Date being carried over to succeeding 12-month periods subject to a maximum carry-over amount of \$15.0 million (without giving effect to the following proviso)); *provided further* that such amount in any calendar year may be increased by an amount not to exceed:

(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Company and, to the extent contributed to the Company, Equity Interests of any Parent Entity, in each case to members of management, directors or consultants of the Company, any Parent Entity or any of its Subsidiaries that occurs after the Start Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of clause (iii)(b) of the preceding paragraph; plus

(b) the cash proceeds of key man life insurance policies received by the Company or its Restricted Subsidiaries after the Start Date; less

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(c) the amount of any Restricted Payments made in any prior calendar year pursuant to clauses (a) and (b) of this clause (v);

(vi) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Company or any of its Restricted Subsidiaries or any class or series of preferred stock of a Restricted Subsidiary issued in accordance with the covenant described under Section 4.09 to the extent such dividends are included in the definition of Fixed Charges;

(vii) purchases, redemptions or other acquisitions or retirements of Equity Interests occurring or deemed to occur upon (1) exercise of stock options, warrants or other equity-based awards to the extent such Equity Interests represent a portion of the exercise price of such options, warrants or other equity-based awards and (2) the exercise of stock options, warrants or other equity based awards or the vesting or issuance of shares of restricted stock or other Equity Interests to the extent such Equity Interests represent a portion of the tax liability of the holder thereof with respect thereto;

(viii) [RESERVED];

(ix) repurchases of Indebtedness that is subordinated to the Notes or a Subsidiary Guarantee at a purchase price not greater than (1) 101% of the principal amount of such subordinated Indebtedness in the event of a Change of Control or (2) 100% of the principal amount of such subordinated Indebtedness in the event of an asset sale outside of the ordinary course of business, and redemptions of preferred Equity Interests, in each case in connection with any change of control offer or asset sale offer required by the terms thereof, but only if the Company has first complied with and fully satisfied its obligations, if any, under Section 4.15;

(x) Investments that are made with Excluded Contributions;

(xi) the declaration and payment of dividends or distributions by the Company or any Restricted Subsidiary of the Company to, or the making of other Restricted Payments to, any Parent Entity in aggregate amounts not to exceed the aggregate amounts required for any such Parent Entities to pay, in each case without duplication:

(a) franchise taxes and expenses required to maintain their corporate existence;

(b) foreign, federal, state and local income and other taxes, to the extent such taxes are attributable to the income, revenue, receipts, capital or margin of the Company and its Restricted Subsidiaries and, to the extent of the amount actually received from their Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income, revenue, receipts, capital or margin of such Unrestricted Subsidiaries; *provided* that in each case the amount of such payments in any fiscal year does not exceed the amount that the Company and its Restricted Subsidiaries would be required to pay in respect of foreign, federal, state and local taxes for such fiscal year were the Company, its Restricted Subsidiaries and its Unrestricted Subsidiaries (to the extent described above) to pay such taxes separately from any such Parent Entity;

(c) customary salary, bonus and other benefits payable to officers, directors and employees of any Parent Entity to the extent such salaries, bonuses and other benefits are directly or indirectly attributable to the ownership or operation of the Company and its Restricted Subsidiaries, including the Company's proportionate share of such amounts relating to any Parent Entity being a public company, including directors' fees;

(d) general corporate operating and overhead costs and expenses of any Parent Entity to the extent such costs and expenses are directly or indirectly attributable to the ownership or operation of the Company and its Restricted Subsidiaries, including the Company's proportionate share of the expenses relating to any Parent Entity being a public company; and

(e) reasonable fees and expenses other than to Affiliates of the Company related to any unsuccessful equity or debt offering of such Parent Entity;

(xii) so long as no Default or Event of Default shall have occurred and be continuing, the payment of dividends on the Company's common Capital Stock (or any Restricted Payment to any Parent Entity to fund the payment by such Parent Entity of dividends on such entity's common Capital Stock) following the consummation after the Start Date of an underwritten public Equity Offering of the Company's or any Parent Entity's common Capital Stock of up to 6% per annum of the net cash proceeds received after the Start Date by the Company from any public Equity Offering of common Capital Stock of the Company or contributed after the Start Date to the Company by any Parent Entity from any public Equity Offering of common Capital Stock of the Parent Entity;

(xiii) the payment of cash in lieu of issuance of fractional shares of Capital Stock in connection with any transaction otherwise permitted under this Section 4.07;

(xiv) payments to dissenting stockholders not to exceed \$5.0 million in the aggregate (A) pursuant to applicable law or (B) in connection with the settlement or other satisfaction of legal claims made pursuant to or in connection with a consolidation, merger or transfer of assets in connection with a transaction that is not prohibited by this Indenture;

(xv) the declaration and payment of dividends and distributions by the Company to the holders of its Capital Stock on a pro rata basis in an aggregate amount not to exceed \$100.0 million during any 12-month period from and after April 1, 2011; and

(xvi) the declaration and payment of dividends and distributions by the Company to the holders of its Capital Stock on a pro rata basis of the net after-tax proceeds from sales or other dispositions of the Capital Stock of (a) National CineMedia, LLC and National CineMedia, Inc., or their respective successors, in an aggregate amount not to exceed \$65.0 million and (b) RealD Inc., or its successors, in an aggregate amount not to exceed \$40.0 million.

The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. The fair market value of any assets or securities that are required to be valued by this Section 4.07 shall be determined by the Company or, if such fair market value exceeds \$35.0 million, by the Board of Directors of the Company.

If any Investment is made pursuant to the first paragraph of this Section 4.07 or any clause (other than clause (i)) of the definition of Permitted Investments in a Person that is not a Restricted Subsidiary (other than an Unrestricted Subsidiary) and thereafter such Person becomes a Restricted Subsidiary, such Investment shall thereafter be deemed to have been made pursuant to clause (i) of the definition of Permitted Investments and not pursuant to such first paragraph or other clause for so long as such Person continues to be a Restricted Subsidiary.

**SECTION 4.08. Dividend and Other Payment Restrictions Affecting Subsidiaries.** The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary that is not a Guarantor to:

(i) pay dividends or make any other distributions on its Capital Stock to the Company or any of its Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any Indebtedness owed to the Company or any of its Restricted Subsidiaries;

(ii) make loans or advances to the Company or any of its Restricted Subsidiaries; or

(iii) transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries.

However, the preceding restrictions shall not apply to encumbrances or restrictions existing under or by reason of:

(i) agreements governing Existing Indebtedness, Credit Facilities and Hedging Obligations, including the Credit Agreement, the Existing 2019 Senior Notes indenture and the Existing 2021 Subordinated Notes indenture, as in effect on the Issue Date, and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of those agreements, *provided* that the amendments, modifications, restatements, renewals, increases, supplements, refundings, replacement or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in those agreements on the Issue Date;

(ii) this Indenture, the Notes and the Subsidiary Guarantees (including the Exchange Notes and the Guarantees thereof);

(iii) applicable law, rule, regulation or order;

(iv) any agreement, instrument or Capital Stock of a Person acquired by the Company or any of its Restricted Subsidiaries (including by merger or consolidation) as in effect at the time of such acquisition (except to the extent such agreement, instrument or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired, *provided* that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Indenture to be incurred;

(v) customary non-assignment provisions in leases, licenses and conveyances entered into in the ordinary course of business;

(vi) purchase money obligations for property acquired in the ordinary course of business that impose restrictions on that property of the nature described in clause (iii) of the preceding paragraph;

(vii) any agreement for the sale or other disposition of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending its sale or other disposition;

(viii) Permitted Refinancing Indebtedness, *provided* that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(ix) Liens securing Indebtedness otherwise permitted to be incurred under the provisions of Section 4.12 that limit the right of the debtor to dispose of the assets subject to such Liens;

(x) provisions with respect to the disposition or distribution of assets or property in joint venture agreements, stockholder agreements, asset sale agreements, stock sale agreements and other similar agreements and agreements relating to Permitted Business Investments;

(xi) the issuance of preferred stock by a Restricted Subsidiary or the payment of dividends thereon in accordance with the terms thereof, *provided* that issuance of such preferred stock is permitted pursuant to Section 4.09 and the terms of such preferred stock do not expressly restrict the ability of a Restricted Subsidiary to pay dividends or make any other distributions on its Capital Stock (other than requirements to pay dividends or liquidation preferences on such preferred stock prior to paying any dividends or making any other distributions on such other Capital Stock);

(xii) encumbrances or restrictions contained in any Indebtedness, Disqualified Stock or preferred stock incurred by a Foreign Restricted Subsidiary pursuant to the first paragraph of or clauses (i), (iv), (v) (but only to the extent a Foreign Restricted Subsidiary initially would have been permitted to incur the underlying Indebtedness), (xiv), (xv), (xvi) or (xviii) of the second paragraph of Section 4.09; *provided* that such encumbrance or restriction shall only apply to such Foreign Restricted Subsidiary;

(xiii) supermajority voting requirements existing under corporate charters, bylaws, stockholders agreements and similar documents and agreements;

(xiv) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(xv) customary subordination provisions governing Indebtedness permitted pursuant to Section 4.09;

(xvi) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (ii) through (xv) above or this clause (xvi); *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Company, not materially more restrictive with respect to such encumbrances and restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; and

(xvii) restrictions or conditions of the types contained in clause (iii) of the preceding paragraph contained in any operating, construction, service, supply, purchase or other agreement to which the Company or any Restricted Subsidiary is a party entered into in the ordinary course of business; *provided* that such agreement limits the encumbrance solely to the property or assets of the Company or such Restricted Subsidiary that is the subject of such agreement, the payment rights arising thereunder and the proceeds thereof and does not extend to any other asset or property of such Restricted Subsidiary or the assets or property of the Company or any other Restricted Subsidiary.

In each case set forth above, notwithstanding any stated limitation on the assets or property that may be subject to such encumbrance or restriction, an encumbrance or restriction on a specified asset or property or group or type of assets or property may also apply to all improvements, additions and accessions thereto, assets and property affixed or appurtenant thereto, and all products and proceeds thereof, including dividends, distributions, interest and increases in respect thereof.

**SECTION 4.09. Incurrence of Indebtedness and Issuance of Preferred Stock.** The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness (including Acquired Debt), and the Company shall not

issue any Disqualified Stock and shall not permit any of its Restricted Subsidiaries to issue any Disqualified Stock or shares of preferred stock; *provided, however*, that the Company may incur Indebtedness (including Acquired Debt) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur Indebtedness (including Acquired Debt), issue shares of Disqualified Stock and issue shares of preferred stock, if the Fixed Charge Coverage Ratio for the Company's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued would have been at least 2.0 to 1.0, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or Disqualified Stock or preferred stock had been issued, as the case may be, at the beginning of such four-quarter period.

The first paragraph of this Section 4.09 shall not prohibit:

(i) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness and letters of credit under one or more Credit Facilities in an aggregate principal amount at any one time outstanding under this clause (i) (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of the Company and its Restricted Subsidiaries thereunder) not to exceed \$1,700.0 million;

(ii) the incurrence by the Company and its Restricted Subsidiaries of Existing Indebtedness (other than Indebtedness described in clauses (i), (iii) and (xviii));

(iii) the incurrence by the Company and any Guarantor of Indebtedness represented by the Notes (other than Additional Notes) and the Exchange Notes issued in exchange therefor and any Subsidiary Guarantees of the foregoing;

(iv) (a) Indebtedness constituting Capital Lease Obligations and (b) Indebtedness, Disqualified Stock and preferred stock incurred by the Company or any of its Restricted Subsidiaries to finance the purchase, lease or improvement of property (real or personal) or equipment (other than software) that is used or useful in a Permitted Business (but excluding the purchase of Capital Stock of any Person), *provided* that the aggregate amount of Indebtedness, Disqualified Stock and preferred stock incurred pursuant to this clause (iv)(b) when aggregated with the then outstanding amount of such obligations under clause (v) incurred to refinance such obligations initially incurred in reliance on this clause (iv)(b) does not exceed 7.5% of Consolidated Net Tangible Assets (determined as of the time of such incurrence) at any time outstanding;

(v) the incurrence by the Company or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to refund, refinance or replace Indebtedness (other than intercompany Indebtedness) that was permitted by this Indenture to be incurred under this clause (v), the first paragraph of this Section 4.09 or clauses (ii), (iii), (iv), (x) or (xvi) of this paragraph and related interest, premiums, fees and other Obligations;

(vi) the incurrence by the Company or any of its Restricted Subsidiaries of intercompany Indebtedness, Disqualified Stock or preferred stock between or among the Company and any of its Restricted Subsidiaries; *provided, however*, that:

(a) if the Company or any Guarantor is the obligor on such Indebtedness, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Obligations with respect to the Notes, in the case of the Company, or the Subsidiary Guarantee, in the case of a Guarantor; and

- (b) (1) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness, Disqualified Stock or preferred stock being held by a Person other than the Company or a Restricted Subsidiary of the Company and (2) any sale or other transfer of any such Indebtedness, Disqualified Stock or preferred stock (but for the avoidance of doubt excluding the grant of a Permitted Lien thereon) to a Person that is neither the Company nor a Restricted Subsidiary of the Company shall be deemed, in each case, to constitute an incurrence of such Indebtedness, Disqualified Stock or preferred stock by the Company or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (vi);
- (vii) the incurrence by the Company or any of its Restricted Subsidiaries of Hedging Obligations;
- (viii) the Guarantee by the Company or a Restricted Subsidiary of the Company of Indebtedness of the Company or a Restricted Subsidiary of the Company that was permitted to be incurred by another provision of this Section 4.09; *provided* that in the event such Indebtedness that is being guaranteed is (a) *pari passu* with the Notes or a Subsidiary Guarantee, as the case may be, then the related Guarantee shall rank equally in right of payment to the Notes or Subsidiary Guarantee, as the case may be, or (b) subordinated to the Notes or a Subsidiary Guarantee, as the case may be, then the related Guarantee shall be subordinated in right of payment to the Notes or such Subsidiary Guarantee, as the case may be;
- (ix) the accrual of interest or dividends, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, the payment of dividends on Disqualified Stock or preferred stock in the form of additional shares of the same class of Disqualified Stock or preferred stock and the incurrence of unrealized losses or charges in respect of Hedging Obligations (including those resulting from the application of ASC Topic 815 (formerly SFAS 133) and similar provisions), in each case will be deemed not to be an incurrence of Indebtedness or an issuance of Disqualified Stock or preferred stock for purposes of this covenant;
- (x) Indebtedness arising from agreements of the Company or a Restricted Subsidiary providing for indemnification, adjustment of purchase price, earn-out or other similar obligations, in each case, incurred or assumed in connection with the disposition or acquisition of any business, assets or a Restricted Subsidiary, other than Guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition; *provided* that the maximum aggregate liability in respect of all such Indebtedness shall at no time exceed the fair market value of the consideration actually received (or, in the case of an acquisition, paid) by the Company and its Restricted Subsidiaries in connection with such transaction;
- (xi) Indebtedness supported by one or more letters of credit incurred under a Credit Facility in accordance with and pursuant to clause (i) of this paragraph *provided* the amount of Indebtedness permitted to be incurred under this clause (xi) relating to any such letter of credit shall not exceed the amount of the letter of credit provided for therein; *provided*, further, that upon any reduction, cancellation or termination of the applicable letter of credit, there shall be deemed to be an incurrence of Indebtedness under this Indenture equal to the excess of the amount of such Indebtedness outstanding immediately after such reduction, cancellation or termination over the remaining stated amount, if any, of such letter of credit or the stated amount of any letter of credit issued in replacement of such letter of credit;
- (xii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within ten Business Days of incurrence;



(xiii) Indebtedness represented by property, liability and workers' compensation insurance, completion guarantees, performance bonds *provided* that to the extent that such performance bonds secure Indebtedness, such Indebtedness is otherwise permitted under this Section 4.09), surety bonds, appeal bonds and other obligations (which, in each case, may be in the form of or secured by letters of credit), in each case required or incurred in the ordinary course of business or in connection with the enforcement of rights or claims of the Company or any Restricted Subsidiary of the Company or in connection with judgments that do not result in a Default or an Event of Default and all reimbursement obligations under such letters of credit;

(xiv) the incurrence by the Company or any of its Restricted Subsidiaries of additional Indebtedness, Disqualified Stock or preferred stock in an aggregate principal amount (or accreted value or liquidation preference, as applicable) at any time outstanding not to exceed \$500.0 million;

(xv) Construction Indebtedness and Permitted Refinancing Indebtedness incurred in respect thereof in an aggregate principal amount that does not exceed \$100.0 million at any time outstanding;

(xvi) Indebtedness, Disqualified Stock or preferred stock of (x) the Company or a Restricted Subsidiary incurred to finance an acquisition or (y) Persons that are acquired by the Company or any Restricted Subsidiary or merged into the Company or a Restricted Subsidiary in accordance with the terms of this Indenture; *provided* that after giving effect to such acquisition or merger, either

(a) the Company would be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first sentence of this Section 4.09, or

(b) the Fixed Charge Coverage Ratio is equal to or greater than such ratio immediately prior to such acquisition or merger;

(xvii) Indebtedness of the Company or any of its Restricted Subsidiaries to an Unrestricted Subsidiary for money borrowed; *provided* that such Indebtedness is subordinated in right of payment to the Notes or such Restricted Subsidiary's Subsidiary Guarantee, the Weighted Average Life to Maturity of such Indebtedness is greater than the Weighted Average Life to Maturity of the Notes and the holders of such Indebtedness are not permitted to accelerate such Indebtedness or exercise any other remedies with respect thereto until 91 days after the Stated Maturity of the Notes; and

(xviii) Indebtedness incurred by the Company or any Restricted Subsidiary with respect to Digital Projector Financing in an aggregate principal amount incurred not to exceed (i) \$70.0 million during the period from the Start Date to the first anniversary thereof; (ii) \$70.0 million during the period from the first anniversary of the Start Date to the second anniversary of the Start Date and (iii) \$60.0 million after the second anniversary of the Start Date; *provided* that any unused or repaid amounts may be carried forward and used in subsequent periods without limitation.

Neither the Company nor any Restricted Subsidiary shall incur any Indebtedness under the preceding paragraph if the proceeds thereof are used, directly or indirectly, to refinance any Indebtedness subordinated to the Notes or any Subsidiary Guarantee unless such Indebtedness shall be subordinated to the Notes or such Subsidiary Guarantee to at least the same extent as such subordinated Indebtedness. No Restricted Subsidiary of the Company that is not a Guarantor may incur any Indebtedness if the proceeds are used to refinance Indebtedness of the Company or a Guarantor (other than a refinancing of all the Notes).

For purposes of determining compliance with this Section 4.09, in the event that an item of proposed Indebtedness (including Acquired Debt) meets the criteria of more than one of the categories described in clauses (i) through (xviii) above, or is entitled to be incurred pursuant to the first paragraph of this Section 4.09, the Company shall be permitted to classify and divide and later classify, reclassify and divide (in whole or in part in its sole discretion) such item of Indebtedness in any manner that complies with this Section 4.09, *provided* that all Indebtedness outstanding on the Issue Date under the Credit Agreement shall be deemed to have been incurred on the Issue Date pursuant to clause (i) above and the Company shall not be permitted to later reclassify all or any portion of such Indebtedness outstanding on the Issue Date under the Credit Agreement. Notwithstanding any other provision of this Section 4.09, the maximum amount of Indebtedness that the Company or any Restricted Subsidiary may incur pursuant to this Section shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Disqualified Stock of the Company or a Restricted Subsidiary, or preferred stock of a Restricted Subsidiary that is not a Guarantor, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof.

This Indenture does not treat (i) unsecured Indebtedness as subordinated to secured Indebtedness merely because it is unsecured, (ii) Senior Debt that is secured Indebtedness as subordinated to any other Senior Debt that is secured Indebtedness merely because it has a junior priority with respect to the same collateral, (iii) any Indebtedness as subordinated to any other Indebtedness merely because of maturity date, order of payment or order of application of funds or (iv) Indebtedness that is not Guaranteed as subordinated to Indebtedness that is Guaranteed merely because of such Guarantee.

**SECTION 4.10. [RESERVED].**

**SECTION 4.11. Transactions with Affiliates.** The Company shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (each, an "Affiliate Transaction"), involving aggregate payments or considerations in excess of \$10.0 million, unless:

(i) the Affiliate Transaction is on terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with a Person who is not an Affiliate; and

(ii) the Company delivers to the Trustee:

(a) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$10.0 million, an Officers' Certificate certifying that such Affiliate Transaction complies with this Section 4.11; and

(b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$50.0 million, a resolution of the Board of Directors of Cinemark Holdings, Inc. and the Company set forth in an Officers' Certificate certifying that such Affiliate Transaction complies with this Section 4.11 and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors of Cinemark Holdings, Inc. and the Company.

The following items shall be deemed to not be Affiliate Transactions and, therefore, shall not be subject to the provisions of the prior paragraph:

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- (i) any employment, consulting or similar agreement or other compensation arrangement entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business of the Company or such Restricted Subsidiary;
  - (ii) transactions between or among the Company and/or its Restricted Subsidiaries;
  - (iii) transactions with a Person that is an Affiliate of the Company solely because the Company owns an Equity Interest in, or controls, such Person;
  - (iv) reasonable fees and expenses and compensation paid to, and indemnity provided on behalf of, officers, directors or employees of the Company or any Subsidiary as determined in good faith by the Board of Directors or senior management of the Company;
  - (v) sales of Equity Interests (other than Disqualified Stock) to Affiliates of the Company and the granting of registration and other customary rights in connection therewith;
  - (vi) Restricted Payments that are permitted by Section 4.07, Permitted Investments (other than pursuant to clause (iii) of such definition) and any transactions excluded from their or any component definitions;
  - (vii) [RESERVED];
  - (viii) transactions pursuant to any contract or agreement described in the Offering Memorandum under the caption "Certain Relationships and Related Party Transactions," as in effect on the Issue Date, in each case as amended, modified or replaced from time to time so long as the amended, modified or new agreements, taken as a whole, are not materially less favorable to the Company and its Restricted Subsidiaries taken as a whole than those in effect on the Issue Date;
  - (ix) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case, in the ordinary course of business and otherwise in compliance with the terms of this Indenture which are fair to the Company and its Restricted Subsidiaries, in the reasonable determination of the Board of Directors of the Company or the senior management thereof, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;
  - (x) the pledge of Equity Interests of an Unrestricted Subsidiary to its lenders to support the Indebtedness of such Unrestricted Subsidiary owed to such lenders; and
  - (xi) transactions in which the Company or any of its Restricted Subsidiaries delivers to the Trustee a letter from an accounting, appraisal or investment banking firm of national standing stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable to the Company or such Restricted Subsidiary than those that would have reasonably been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person on an arm's-length basis.

**SECTION 4.12. Liens.** The Company shall not and shall not permit any Guarantor to create, incur, assume or otherwise cause or suffer to exist or become effective any Lien (other than Permitted Liens) of any kind securing Indebtedness upon any of their property or assets (including Capital Stock of Subsidiaries of the Company), now owned or hereafter acquired, unless contemporaneously with the incurrence of such Lien effective provision is made to secure the Obligations due under this Indenture and the Notes or, in respect of any Lien on any Guarantor's property or assets, any Subsidiary Guarantee of such Guarantor, (i) in the case of Liens securing Indebtedness that is *pari passu* in right of payment with the Notes or any Subsidiary Guarantee, on an equal and ratable basis with (or, if the Company so elects,

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on a senior basis to) the obligations so secured until such time as such obligations are no longer secured by a Lien and (ii) in the case of Liens securing Indebtedness that is expressly subordinated in right of payment to the Notes or any Subsidiary Guarantee, on a senior basis to the obligations so secured with the same relative priority as the Notes or such Subsidiary Guarantee, as the case may be, shall have to that subordinated Indebtedness until such time as such obligations are no longer secured by a Lien.

Any Lien created for the benefit of Holders of the Notes pursuant to this covenant shall be deemed automatically and unconditionally released and discharged upon the release and discharge of each of the Liens described in clauses (i) and (ii) in the preceding paragraph.

**SECTION 4.13. Business Activities.** The Company shall not, and shall not permit any Restricted Subsidiary to, engage in any business other than Permitted Businesses, except to such extent as would not be material to the Company and its Subsidiaries taken as a whole.

**SECTION 4.14. Corporate Existence.** Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect (i) its corporate existence, and the corporate, partnership or other existence of each of its Restricted Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Restricted Subsidiary and (ii) the rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries; *provided, however*, that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Restricted Subsidiaries, if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders of the Notes.

**SECTION 4.15. Offer to Repurchase upon Change of Control.** (a) If a Change of Control occurs, the Company shall be required to make an offer (a “Change of Control Offer”) to each Holder to repurchase all or any part (equal to \$1,000 in principal amount or an integral multiple thereof) of that Holder’s Notes on the terms set forth in this Indenture. In the Change of Control Offer, the Company shall offer a payment in cash (the “Change of Control Payment”) equal to 101% of the principal amount of the Notes repurchased plus accrued and unpaid interest and Additional Interest, if any, on the Notes repurchased to the date of purchase (a “Change of Control Payment Date”). Within 30 days following any Change of Control, the Company shall send a notice to each Holder stating: (i) that the Change of Control Offer is being made pursuant to this Section 4.15 (and describing the transaction or transactions that constitute the Change of Control) and that all Notes tendered shall be accepted for payment; (ii) the purchase price and the Change of Control Payment Date, which shall be no earlier than 30 days and no later than 60 days from the date such notice is sent; (iii) that any Note not tendered shall continue to accrue interest and Additional Interest, if any; (iv) that, unless the Company defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest and Additional Interest, if any, after the Change of Control Payment Date; (v) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer shall be required to surrender the Notes, with the form entitled “Option of Holder to Elect Purchase” on the reverse of the Notes completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date; (vi) that Holders shall be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and (vii) that Holders whose Notes are being purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to \$2,000 in principal amount or an integral multiple of \$1,000 in excess thereof.

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

- (i) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;
- (ii) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

(iii) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Company.

(c) The Paying Agent shall promptly send to each Holder of Notes validly tendered the Change of Control Payment for such Notes, and the Trustee shall promptly authenticate and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each new Note shall be in a principal amount of \$2,000 or an integral multiple of \$1,000 in excess thereof.

(d) If the Change of Control Payment Date is on or after an interest payment record date and on or before the related interest payment date, any accrued and unpaid interest and Additional Interest, if any, will be paid to the Holder in whose name a note is registered at the close of business on such record date, and no other interest or Additional Interest, if any, will be payable to Holders who tender pursuant to the Change of Control Offer.

(e) The Company shall not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer or if an irrevocable notice of redemption has been given pursuant to this Indenture in accordance with the provisions set forth in Section 3.07 for all outstanding Notes.

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

#### **SECTION 4.16. Future Guarantors.**

If any Restricted Subsidiary of the Company that is not a Guarantor (the "New Guarantor") Guarantees, assumes or in any other manner becomes liable with respect to Indebtedness of the Company or any Guarantor (the "Other Indebtedness"), then the Company shall and shall cause the New Guarantor to, within ten Business Days of the date of the New Guarantor's Guarantee or assumption of the Other Indebtedness, execute and deliver to the Trustee a supplemental indenture in the form of Exhibit D attached hereto or otherwise satisfactory to the Trustee pursuant to which the New Guarantor shall become a Guarantor and Guarantee the obligations of the Company under this Indenture and the Notes on a senior basis. Concurrently with the execution and delivery of such supplemental indenture, the Company shall deliver to the Trustee an Opinion of Counsel and an Officers' Certificate to the effect that such supplemental indenture has been duly authorized, executed and delivered by such New Guarantor, and that, subject to the application of bankruptcy, insolvency, moratorium, fraudulent conveyance or transfer or other similar laws relating to creditors' rights generally and to the principles of equity, whether considered in a proceeding at law or in equity, and other customary exceptions, such New Guarantor's Subsidiary Guarantee is a legal, valid and binding obligation of such New Guarantor, enforceable against such New Guarantor in accordance with its terms and as to such other matters as the Trustee may reasonably request. Upon the release, termination or satisfaction of the New Guarantor's Guarantee or assumption of all Other Indebtedness (other than a release, termination or satisfaction as a result of payment under such Guarantee), the New Guarantor's Subsidiary Guarantee shall automatically be released and terminated. Upon request of the New Guarantor, the Trustee shall provide written evidence of such release and termination.

**SECTION 4.17. Designation of Restricted and Unrestricted Subsidiaries.**

The Board of Directors of the Company may designate any Restricted Subsidiary to be an Unrestricted Subsidiary if that designation would not cause a Default. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate fair market value of all outstanding Investments owned by the Company and its Restricted Subsidiaries in the Subsidiary properly designated shall be deemed to be an Investment made as of the time of the designation and shall reduce the amount available for Restricted Payments or Permitted Investments, as determined by the Company. That designation shall only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Board of Directors of the Company may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if the redesignation would not cause a Default.

ARTICLE 5.

SUCCESSORS

**SECTION 5.01. Merger, Consolidation or Sale of Assets.** The Company may not, directly or indirectly, in one or more related transactions: (1) consolidate or merge with or into another Person (whether or not the Company is the surviving corporation); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries, taken as a whole, to another Person; unless:

(i) either: (a) the Company is the surviving corporation; or (b) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation, limited liability company or partnership organized or existing under the laws of the United States, any state of the United States or the District of Columbia; *provided* that if the Person is a partnership or limited liability company, a corporation wholly owned by such Person organized or existing under the laws of the United States, any state of the United States or the District of Columbia that does not and shall not have any material assets or operations shall promptly thereafter become a co-issuer of the Notes pursuant to a supplemental indenture;

(ii) the Person formed by or surviving any such consolidation or merger (if other than the Company) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made expressly assumes all the obligations of the Company under the Notes, this Indenture and the Registration Rights Agreement pursuant to a supplemental indenture executed and delivered to the Trustee in form reasonably satisfactory to the Trustee;

(iii) immediately after such transaction no Default or Event of Default exists;

(iv) the Company or the Person formed by or surviving any such consolidation or merger (if other than the Company), or to which such sale, assignment, transfer, conveyance or other disposition has been made shall, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, (a) be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of Section 4.09 or (b) have a Fixed Charge Coverage Ratio equal to or greater than the Fixed Charge Coverage Ratio of the Company immediately prior to such transaction; and

(v) if the Company is not the surviving corporation, each Guarantor (unless it is the other party to the transactions above, in which case clause (ii) shall apply) shall have by supplemental indenture confirmed that its Subsidiary Guarantee shall apply to such Person's obligations in respect of the Notes and this Indenture and its obligations under the Registration Rights Agreement shall continue to be in effect.

In addition, the Company may not, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person.

Notwithstanding clause (iv) of this Section 5.01, any Restricted Subsidiary may consolidate with, merge into or transfer all or part of its properties and assets to the Company or any Guarantor.

**SECTION 5.02. Successor Corporation Substituted.** Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Company in accordance with Section 5.01 hereof, the successor corporation formed by such consolidation or into or with which the Company is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to the Company shall refer instead to the successor corporation and not to the Company), and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, *provided, however*, that the predecessor company shall not be relieved from the obligation to pay the principal of and interest on the Notes (and its obligations to the Trustee pursuant to Section 7.07) except in the case of a sale or other disposition of all or substantially all of the properties and assets of the Company and its Restricted Subsidiaries taken as a whole that meets the requirements of Section 5.01 hereof.

## ARTICLE 6.

### DEFAULTS AND REMEDIES

**SECTION 6.01. Events of Default.** An "Event of Default" occurs if:

- (i) the Company defaults for 30 days in the payment when due of interest on, or Additional Interest with respect to, the Notes ;
- (ii) the Company defaults in payment when due of the principal of, or premium, if any, on the Notes;
- (iii) the Company or any of its Restricted Subsidiaries fails to comply with any of the provisions of Section 5.01;
- (iv) the Company or any of its Restricted Subsidiaries fails to comply with Section 4.15 for 30 days after receipt by the Company of written notice from the Trustee or the Holders of not less than 25% in principal amount of the Notes;
- (v) the Company or any of its Restricted Subsidiaries fails to observe or perform any of the other agreements in this Indenture for 60 days after receipt by the Company of written notice from the Trustee or the Holders of not less than 25% in principal amount of the Notes;



(vi) a default by the Company or any of its Restricted Subsidiaries occurs under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries) whether such Indebtedness or guarantee now exists, or is created after the Issue Date, if that default:

(a) is caused by a failure to pay principal on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness on the date of such default (a "Payment Default"); or

(b) results in the acceleration of such Indebtedness prior to its express maturity,

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$25.0 million or more;

(vii) a final non-appealable judgment or judgments for the payment of money are entered by a court or courts of competent jurisdiction against the Company or any of its Restricted Subsidiaries and such judgment or judgments remain unpaid or undischarged for a period (during which execution shall not be effectively stayed) of 60 days; *provided* that the aggregate of all such undischarged judgments exceeds \$25.0 million (net of any amount with respect to which a reputable and solvent insurance company has acknowledged liability in writing);

(viii) except as permitted by this Indenture, any Subsidiary Guarantee shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or any Guarantor, or any Person acting on behalf of any Guarantor, shall deny or disaffirm its obligations under its Subsidiary Guarantee;

(ix) the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary, pursuant to or within the meaning of Bankruptcy Law:

(a) commences a voluntary case;

(b) consents to the entry of an order for relief against it in an involuntary case;

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

(d) makes a general assignment for the benefit of its creditors; or

(e) generally is not paying its debts as they become due; or

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

(a) is for relief against the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary, in an involuntary case;

(b) appoints a Custodian of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary, for all or substantially all of the property of the Company or such Subsidiary; or

(c) orders the liquidation of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary;

and in each case the order or decree remains unstayed and in effect for 60 consecutive days.

**SECTION 6.02. Acceleration.** In the case of an Event of Default arising from clause (ix) or (x) of Section 6.01 with respect to the Company, any Subsidiary that is a Significant Subsidiary or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary, all outstanding Notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or Holders of at least 25% in aggregate principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately. Upon any such declaration, the principal of, premium, if any, and accrued and unpaid interest, if any, and Additional Interest, if any, shall become due and payable immediately. The Trustee has no duty or obligation to determine whether an Event of Default has occurred as a result of the events described above and shall have notice of such events only in accordance with Section 7.02(i) herein.

Notwithstanding the foregoing, if an Event of Default specified in clause (vi) of Section 6.01 shall have occurred and be continuing, such Event of Default and any consequential acceleration shall be automatically rescinded if (i) the Indebtedness that is the subject of such Event of Default has been repaid or (ii) if the default relating to such Indebtedness is waived or cured and if such Indebtedness has been accelerated, then the Holders thereof have rescinded their declaration of acceleration in respect of such Indebtedness.

Any such declaration with respect to the Notes may be rescinded and annulled by the Holders of a majority in aggregate principal amount of the outstanding Notes by written notice to the Trustee if (i) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction, (ii) all existing Events of Default have been cured or waived except nonpayment of principal of or interest on the Notes that has become due solely by such declaration of acceleration, (iii) to the extent the payment of such interest is lawful, interest (at the same rate specified in the Notes) on overdue installments of interest and overdue payments of principal, which has become due otherwise than by such declaration of acceleration, has been paid, (iv) the Company has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances and (v) in the event of the cure or waiver of a Default or Event of Default of the type described in clauses (ix) and (x) of Section 6.01 the Trustee has received an Officers' Certificate and Opinion of Counsel that such Default or Event of Default has been cured or waived. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

**SECTION 6.03. Other Remedies.** If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal amount, premium on, Additional Interest, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

**SECTION 6.04. Waiver of Past Defaults.** Subject to Sections 2.09, 6.07 and 9.02, Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may on behalf of the Holders of all of the Notes waive an existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the principal of, premium and Additional Interest on, or interest on the Notes (including in connection with an offer to purchase); *provided, however*, that, subject to Section 6.02, the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

**SECTION 6.05. Control by Majority.** Holders of a majority in principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability.

**SECTION 6.06. Limitation on Suits.** A Holder of a Note may pursue a remedy with respect to this Indenture or the Notes only if:

- (a) the Holder of a Note gives to the Trustee written notice of a continuing Event of Default;
- (b) the Holders of at least 25% in principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;
- (c) such Holder of a Note or Holders of Notes offer and, if requested, provide to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense;
- (d) the Trustee does not comply with the request within 60 days after receipt of the request and the offer and, if requested, the provision of indemnity; and
- (e) during such 60-day period the Holders of a majority in principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with the request.

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

**SECTION 6.07. Rights of Holders of Notes to Receive Payment.** Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal amount, premium and Additional Interest, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

**SECTION 6.08. Collection Suit by Trustee.** If an Event of Default specified in Section 6.01(i) or (ii) occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal amount of, premium and Additional Interest, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

**SECTION 6.09. Trustee May File Proofs of Claim.** The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

**SECTION 6.10. Priorities.** After an Event of Default, any money or other property distributable in respect of the Company's obligations under this Indenture shall be paid in the following order:

First: to the Trustee (including any predecessor Trustee), its agents and attorneys for amounts due under Section 7.07, including payment of all compensation, expense and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

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

Third: to the Company or to such party as a court of competent jurisdiction shall direct in writing.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.10.

**SECTION 6.11. Undertaking for Costs.** In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

ARTICLE 7.

TRUSTEE

**SECTION 7.01. Duties of Trustee.** (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) or (d) of this Section;

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

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c) and (e) of this Section.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee shall be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

**SECTION 7.02. Rights of Trustee.** (a) The Trustee may, in the absence of bad faith on its part, conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel selected by it and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

(f) 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 unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(g) Any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company request or Company order and any resolution of the Company's Board of Directors may be sufficiently evidenced by a board resolution.

(h) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine, to the extent necessary and consistent with each inquiry or investigation, 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.

(i) The Trustee shall not be deemed to have notice, nor shall it be charged with knowledge, of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of such Default or Event of Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

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

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(k) The Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles or 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.

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

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

**SECTION 7.03. Individual Rights of Trustee.** The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11.

**SECTION 7.04. Trustee's Disclaimer.** The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes or any security for the payment of the Notes, it shall not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

**SECTION 7.05. Notice of Defaults.** If a Default or Event of Default occurs and is continuing and if it is actually known to a Responsible Officer of the Trustee, the Trustee shall send to Holders of Notes a notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, premium and Additional Interest, if any, or interest on any Note, the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

**SECTION 7.06. Reports by Trustee to Holders of the Notes.** Within 60 days after each May 15 beginning with the May 15 following the Issue Date, and for so long as Notes remain outstanding, the Trustee shall send to the Holders of the Notes a brief report dated as of such reporting date that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the 12 months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with TIA § 313(b)(2) to the extent applicable. The Trustee shall also transmit all reports as required by TIA § 313(c).

A copy of each report at the time of its being sent to the Holders of Notes shall be sent to the Company and filed with the Commission and each stock exchange on which the Notes are listed in accordance with TIA § 313(d). The Company shall promptly notify the Trustee when the Notes are listed on any stock exchange or any delisting thereof.

**SECTION 7.07. Compensation and Indemnity.** The Company shall pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee promptly upon written request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company shall indemnify the Trustee against any and all losses, liabilities or expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company (including this Section 7.07) and defending itself against any claim (whether asserted by the Company or any Holder or any other person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense may be attributable to its negligence or bad faith. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.



The obligations of the Company under this Section 7.07 shall survive the resignation or removal of the Trustee, the satisfaction and discharge of this Indenture and the termination of this Indenture.

To secure the Company's payment obligations in this Section, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the resignation or removal of the Trustee, the satisfaction and discharge of this Indenture and the termination of this Indenture.

In addition and without prejudice to its rights hereunder, when the Trustee incurs expenses or renders services after an Event of Default specified in Sections 6.01(ix) or (x) occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

**SECTION 7.08. Replacement of Trustee.** A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section.

The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of Notes of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

- (a) the Trustee fails to comply with Section 7.10;
- (b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (c) a Custodian or public officer takes charge of the Trustee or its property; or
- (d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of Notes of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder of a Note who has been a Holder of a Note for at least six months, fails to comply with Section 7.10, such Holder of a Note may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture.

The successor Trustee shall send a notice of its succession to Holders of the Notes. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Company's obligations under Section 7.07 shall continue for the benefit of the retiring Trustee.

**SECTION 7.09. Successor Trustee by Merger, Etc.** If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another Person, the successor Person without any further act shall be the successor Trustee.

**SECTION 7.10. Eligibility; Disqualification.** There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and (i) that has a combined capital and surplus of at least \$50 million as set forth in its most recent published annual report of condition, or (ii) that is a wholly owned subsidiary of a bank or bank holding company which has a consolidated net worth in excess of \$50 million.

This Indenture shall always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b).

Nothing herein shall prohibit the Trustee from making the application to the Commission referred to in the penultimate paragraph of Section 310(b) of the TIA.

**SECTION 7.11. Preferential Collection of Claims Against the Company.** The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

## ARTICLE 8.

### LEGAL DEFEASANCE AND COVENANT DEFEASANCE

**SECTION 8.01. Option to Effect Legal Defeasance or Covenant Defeasance.** The Company may, at the option of its Board of Directors evidenced by a resolution set forth in an Officers' Certificate, at any time, elect to have either Section 8.02 or 8.03 applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

**SECTION 8.02. Legal Defeasance and Discharge.** Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, subject to the satisfaction of the conditions set forth in Section 8.04, the Company shall be deemed to have been discharged from all of its obligations with respect to all outstanding Notes and this Indenture and the Guarantors shall be deemed to have been discharged from their obligations with respect to their Subsidiary Guarantees and this Indenture on the date the conditions set forth below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.05, and to have satisfied all its other obligations under such Notes and this Indenture (and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging the same); *provided* that the following provisions which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium and Additional Interest, if any, on such Notes when such payments are due from the trust referred to in Section 8.05; (b) the Company's

obligations with respect to the Notes concerning issuing temporary Notes, registration of Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust; (c) the rights, powers, trusts, duties and immunities of the Trustee, and the Company's and the Guarantor's obligations in connection therewith; and (d) this Article 8. Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03.

**SECTION 8.03. Covenant Defeasance.** Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Company and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from their respective obligations under the covenants contained in Sections 4.03, 4.04, 4.05, 4.07, 4.08, 4.09, 4.11, 4.12, 4.13, 4.15, 4.16, 4.17 and 5.01(iv) and Article 11 with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 are satisfied (hereinafter, "Covenant Defeasance"), and the Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Company's exercise under Section 8.01 of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04, Sections 6.01(iv) through 6.01(vii) shall not constitute Events of Default.

**SECTION 8.04. Conditions to Legal or Covenant Defeasance.** The following shall be the conditions to the application of either Section 8.02 or 8.03 to the outstanding Notes:

(a) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as shall be sufficient, in the opinion of a nationally recognized firm of independent public accountants (or, if two or more nationally recognized firms of independent public accountants decline to issue such opinion as a matter of policy after the Company has made reasonable efforts to obtain such an opinion, in the opinion of the Company's chief financial officer), to pay the principal of, and interest, premium and Additional Interest, if any, on the outstanding Notes on their Stated Maturity or on the applicable redemption date, as the case may be, and the Company must specify whether the Notes are being defeased to maturity or to a particular redemption date;

(b) in the case of Legal Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the Issue Date, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the outstanding Notes shall not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and shall 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 Legal Defeasance had not occurred;

(c) in the case of Covenant Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that the Holders of the outstanding Notes shall not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and shall be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the incurrence of Indebtedness all or a portion of the proceeds of which shall be used to defease the Notes pursuant to this Article 8 concurrently with such incurrence and the granting of Liens in connection therewith);

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;

(f) the Company must have delivered to the Trustee an Opinion of Counsel to the effect that, subject to customary assumptions and exclusions, assuming that no intervening bankruptcy of the Company between the date of the deposit and the 91st day following the deposit will occur and that no Holder of Notes is an insider of the Company under applicable bankruptcy law, no trust funds will be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally;

(g) 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 preferring the Holders over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding creditors of the Company or others; and

(h) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

**SECTION 8.05. Deposited Money and Government Securities to Be Held in Trust; Other Miscellaneous Provisions.**

Subject to Section 8.06, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "Trustee") pursuant to Section 8.04 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal of or premium, if any, Additional Interest, if any, or interest, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article 8 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon the request of the Company any money or non-callable Government Securities held by it as provided in Section 8.04 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (or, if two or more nationally recognized firms of independent public accountants decline to issue such opinion as a matter of policy after the Company has made reasonable efforts to obtain such an opinion, in the opinion of the Company's chief financial officer), (which may be the opinion delivered under Section 8.04(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

**SECTION 8.06. Repayment to the Company.** Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or premium, if any, Additional Interest, if any, or interest on the Notes and remaining unclaimed for two years after such principal, and premium, if any, Additional Interest, if any, or interest has become due and payable shall be paid to the Company on its request or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as a creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in The New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining shall be repaid to the Company.

**SECTION 8.07. Reinstatement.** If the Trustee or Paying Agent is unable to apply any United States dollars or non-callable Government Securities in accordance with Section 8.02 or 8.03, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Notes and any Guarantor's obligations under this Indenture and its Subsidiary Guarantee shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03, as the case may be; *provided, however*, that, if the Company has made any payment of principal of, premium, if any, Additional Interest, if any, or interest on any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

## ARTICLE 9.

### AMENDMENT, SUPPLEMENT AND WAIVER

**SECTION 9.01. Without Consent of Holders of Notes.** Notwithstanding Section 9.02, the Company, the Guarantors and the Trustee may amend or supplement this Indenture, the Notes or the Subsidiary Guarantees without the consent of any Holder of a Note:

- (a) to cure any ambiguity, defect or inconsistency;
- (b) to provide for uncertificated Notes in addition to or in place of certificated Notes (provided that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code);

(c) to provide for the assumption of the Company's or a Guarantor's obligations to the Holders of the Notes in the case of a merger or consolidation or sale of all or substantially all of the Company's assets or a Guarantor;

(d) to make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights hereunder of any Holder;

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

(f) to add Subsidiary Guarantees with respect to the Notes or to secure the Notes or the Subsidiary Guarantees;

(g) to comply with the requirements of the Commission in order to effect or maintain the qualification of this Indenture under the TIA;

(h) to evidence and provide for the acceptance and appointment under this Indenture of a successor trustee thereunder pursuant to the requirements herein; and

(i) to conform the text of the Notes, the Subsidiary Guarantees or this Indenture to any provision of the "Description of Notes" section contained in the Offering Memorandum to the extent that such provision in such "Description of Notes" section was intended to be a verbatim recitation of a provision of the Notes, the Subsidiary Guarantees or this Indenture.

Subject to Section 9.06, upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee shall join with the Company and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

**SECTION 9.02. With Consent of Holders of Notes.** Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture (including Section 4.15), the Notes and the Subsidiary Guarantees with the consent of the Holders of at least a majority in principal amount of the Notes then outstanding voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of or premium, if any, Additional Interest, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Notes or the Subsidiary Guarantees may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes). Sections 2.08 and 2.09 shall determine which Notes are considered to be "outstanding" for purposes of this Section 9.02.

Subject to Section 9.06, upon the request of the Company accompanied by a resolution of the Board of Directors of the Company authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02, the Trustee shall join with the Company and the Guarantors in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental indenture.

It shall not be necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

However, without the consent of each Holder affected, an amendment or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

- (a) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;
- (b) reduce the principal of or change the fixed maturity of any Note or alter the provisions with respect to the redemption of the Notes;
- (c) reduce the rate of or change the time for payment of interest on any Note;
- (d) waive a Default or Event of Default in the payment of principal of, or interest or premium, or Additional Interest, if any, on the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes and a waiver of the payment default that resulted from such acceleration);
- (e) make any Note payable in currency other than that stated in the Notes;
- (f) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of Notes to receive payments of principal of, or interest or premium or Additional Interest, if any, on the Notes;
- (g) waive a redemption payment with respect to any Note;
- (h) impair the right of any Holder to receive payment of principal of, or interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;
- (i) release any Guarantor from any of its Obligations under its Subsidiary Guarantee or this Indenture, except in accordance with the terms of this Indenture; or
- (j) make any change in the foregoing amendment and waiver provisions.

For avoidance of doubt, clauses (b) and (g) of the foregoing paragraph do not apply to Section 4.15, provisions related thereto and payments required thereunder; *provided* that Section 4.15, provisions related thereto and payments required thereunder shall be governed by the first paragraph of this Section 9.02.

**SECTION 9.03. Compliance with Trust Indenture Act.** Every amendment or supplement to this Indenture or the Notes shall be set forth in an amended or supplemental indenture that complies with the TIA as then in effect.

**SECTION 9.04. Revocation and Effect of Consents.** Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt

as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

**SECTION 9.05. Notice of Amendment; Notation on or Exchange of Notes.** After any amendment under this Article becomes effective, the Company shall send to Holders of Notes a notice briefly describing such amendment. The failure to give such notice to all Holders of Notes, or any defect therein, shall not impair or affect the validity of an amendment under this Article.

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Company in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

**SECTION 9.06. Trustee to Sign Amendments, Etc.** The Trustee shall sign any amended or supplemental indenture authorized pursuant to this Article 9 if the amendment or supplement, in the sole discretion of the Trustee, does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amendment or supplemental indenture until its Board of Directors approves it. In executing any amended or supplemental indenture, the Trustee shall be entitled to receive and (subject to Section 7.01) shall be fully protected in relying upon, in addition to the documents required by Section 12.04, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture.

## ARTICLE 10.

### SATISFACTION AND DISCHARGE

**SECTION 10.01. Satisfaction and Discharge.**

This Indenture shall be discharged and shall cease to be of further effect, except as to surviving rights of registration of transfer or exchange of the Notes, as to all Notes issued hereunder, when:

(a) either:

(i) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has been deposited in trust and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or

(ii) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the sending of a notice of redemption or otherwise or will become due and payable within one year or are to be called for redemption within one year and the Company or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination of cash in U.S. dollars and noncallable Government Securities, in amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants (or, if two or more nationally recognized firms of



independent public accountants decline to issue such opinion as a matter of policy after the Company has made reasonable efforts to obtain such an opinion, in the opinion of the Company's chief financial officer), without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium and Additional Interest, if any, and accrued interest to the date of maturity or redemption;

(b) no Default or Event of Default has occurred and is continuing on the date of the deposit or shall occur as a result of the deposit and the deposit shall not result in a breach or violation of, or constitute a default under, any other instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound;

(c) the Company or any Guarantor has paid or caused to be paid all other sums payable by it under this Indenture; and

(d) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at their Stated Maturity or the redemption date, as the case may be.

In addition, the Company must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee each stating that all conditions precedent to the satisfaction and discharge have been satisfied.

#### **SECTION 10.02. Deposited Cash and Government Securities.**

All cash and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 10.02, the "Trustee") pursuant to Section 10.01 in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest and Additional Interest, if any, but such cash and securities need not be segregated from other funds except to the extent required by law.

#### **SECTION 10.03. Repayment to Company.**

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

**SECTION 10.04. Reinstatement.** If the Trustee or Paying Agent is unable to apply any United States dollars or non-callable Government Securities in accordance with Sections 10.01 and 10.02, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Notes and any Guarantor's obligations under this Indenture and its Subsidiary Guarantee shall be revived

and reinstated as though no deposit had occurred pursuant to Sections 10.01 and 10.02 until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Sections 10.01 and 10.02, as the case may be; *provided, however*, that, if the Company makes any payment of principal of, premium on, if any, or interest or Additional Interest, if any, on any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

## ARTICLE 11.

### SUBSIDIARY GUARANTEES

#### **SECTION 11.01. Guarantee.**

Subject to this Article 11, each of the Guarantors hereby, jointly and severally, fully, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety, to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder, that: (a) the principal of, premium, if any, interest and Additional Interest, if any, on the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of, premium, and interest on the Notes, if any, if lawful, and all other obligations of the Company to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this Subsidiary Guarantee is a general unsecured obligation of such Guarantor and it is a guarantee of payment and not a guarantee of collection.

The Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenants that this Subsidiary Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and this Indenture. Each Guarantor hereby expressly waives all statutory suretyship defenses that it may waive under applicable law, including, without limitation, California Civil Code Section 2856.

Each Guarantor also agrees to pay, in addition to the amount stated above, any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Trustee or any Holder in enforcing any rights under this Section 11.01.

If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Company or the Guarantors, any amount paid by the Company or a Guarantor either to the Trustee or such Holder, this Subsidiary Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 for the purposes of this Subsidiary Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Subsidiary Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under this Subsidiary Guarantee.

Each Subsidiary Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Company or any Guarantor for liquidation or reorganization, should the Company or any Guarantor become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Company's or any other Guarantor's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or Subsidiary Guarantees, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

In case any provision of any Subsidiary Guarantee 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.

The Subsidiary Guarantee issued by any Guarantor shall be a general unsecured senior obligation of such Guarantor and shall *bepari passu* in right of payment with all existing and future Senior Debt of such Guarantor, if any.

Each payment to be made by a Guarantor in respect of its Subsidiary Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

**SECTION 11.02. Limitation on Guarantor Liability.**

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Subsidiary Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Subsidiary Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor will be limited to such maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 11, result in the obligations of such Guarantor under its Subsidiary Guarantee not constituting a fraudulent transfer or conveyance.

**SECTION 11.03. Execution and Delivery.**

To evidence its Subsidiary Guarantee set forth in Section 11.01, each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by an Officer of such Guarantor.

Each Guarantor hereby agrees that its Subsidiary Guarantee set forth in Section 11.01 shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Subsidiary Guarantee on the Notes.

If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Note, the Subsidiary Guarantee shall be valid nevertheless.

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

If required by Section 4.16, the Company shall cause any newly created or acquired Restricted Subsidiary to comply with the provisions of Section 4.16 and this Article 11, to the extent applicable.

**SECTION 11.04. Successors and Assigns.**

This Article 11 shall inure to the benefit of the successors and assigns of the Trustee and the Holders and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges conferred upon that party in this Indenture and in the Notes shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this Indenture.

**SECTION 11.05. No Waiver.**

Neither a failure nor a delay on the part of either the Trustee or the Holders in exercising any right, power or privilege under this Article 11 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article 11 at law, in equity, by statute or otherwise.

**SECTION 11.06. Right of Contribution.**

Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder who has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 11.07. The provisions of this Section shall in no respect limit the obligations and liabilities of any Guarantor to the Trustee and the Holders and each Guarantor shall remain liable to the Trustee and the Holders for the full amount guaranteed by such Guarantor hereunder.

**SECTION 11.07. No Subrogation.**

Notwithstanding any payment or payments made by any of the Guarantors hereunder, no Guarantor shall be entitled to be subrogated to any of the rights of the Trustee or any Holder against the Company or any other Guarantor or any collateral security or Guarantee or right of offset held by the Trustee or any Holder for the payment of the Obligations under this Indenture, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Company or any other Guarantor in respect of payments made by such Guarantor hereunder, until all amounts owing to the Trustee and the

Holders by the Company on account of the Obligations under this Indenture are paid in full. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Obligations under this Indenture shall not have been paid in full, such amount shall be held by such Guarantor in trust for the Trustee and the Holders, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Trustee in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Trustee, if required), to be applied against the Obligations under this Indenture.

**SECTION 11.08. Guarantors May Consolidate, Etc., on Certain Terms.**

A Guarantor may not sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, other than the Company or another Guarantor, unless immediately after giving effect to the transaction, no Default or Event of Default exists.

In case of any such consolidation, merger, sale or other disposition and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee, of the Subsidiary Guarantee and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, such successor Person shall succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. All the Subsidiary Guarantees so issued shall in all respects have the same legal rank and benefit under this Indenture as the Subsidiary Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all of such Subsidiary Guarantees had been issued at the date of the execution hereof.

Except as set forth in Articles 4 and 5, nothing contained in this Indenture or in any of the Notes shall prevent any consolidation or merger of a Guarantor with or into the Company or another Guarantor, or shall prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Company or another Guarantor.

**SECTION 11.09. Releases of Subsidiary Guarantee.**

The Subsidiary Guarantee of a Guarantor will be released and the Guarantor will be relieved of any obligations under the Notes, this Indenture and the Registration Rights Agreement:

- (a) in connection with any sale or other disposition of all or substantially all of the assets of that Guarantor (including by way of merger or consolidation) to a Person that is not (either before or after giving effect to such transaction) a Subsidiary of the Company, if the sale or other disposition complies with Section 11.08;
- (b) in connection with any sale, exchange or transfer of the Capital Stock of a Guarantor, after which such Guarantor is no longer a Subsidiary of the Company to a Person that is not (either before or after giving effect to such transaction) a Subsidiary of the Company, if the sale, exchange or transfer complies with Section 11.08;
- (c) if the Company designates any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary in accordance with Section 4.17;
- (d) upon the discharge of the Notes in accordance with Section 8.02; or
- (e) upon the release, termination or satisfaction of the Guarantor's guarantee or assumption of certain Other Indebtedness in accordance with Section 4.16.

Upon delivery by the Company to the Trustee of an Officers' Certificate and an Opinion of Counsel both to the effect that all conditions precedent set forth in this Section 11.09 to the release of the Subsidiary Guarantee of a Guarantor have been satisfied, to the extent such conditions can be satisfied as of such date, the Trustee shall execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Subsidiary Guarantee, to be effective upon the satisfaction of all such conditions precedent.

Any Guarantor not released from its obligations under its Subsidiary Guarantee shall remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under this Indenture as provided in this Article 11.

ARTICLE 12.

MISCELLANEOUS

**SECTION 12.01. Trust Indenture Act Controls**

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by TIA § 318(c), the imposed duties shall control.

**SECTION 12.02. Notices**. Any notice or communication by the Company, any Guarantor or the Trustee shall be in writing (which may be a facsimile, receipt confirmed) and delivered in person or mailed by first class mail addressed as follows:

If to the Company:

Cinemark USA, Inc.  
3900 Dallas Parkway  
Suite 500  
Plano, Texas 75093  
Telephone No.: (972) 665-1000  
Facsimile No.: (972) 665-1004  
Attention: Chief Financial Officer

With a copy to:

Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
1700 Pacific Avenue  
Suite 4100  
Dallas, Texas 75201  
Phone No.: (214) 969-2800  
Telecopier No.: (214) 969-4343  
Attention: Terry M. Schpok, P.C.

If to any Guarantor:

c/o the Company, at the address noted above, with a copy as noted.

If to the Trustee:

Wells Fargo Bank, N.A.  
750 N. St. Paul Place, Suite 1750  
MAC: T9263-170  
Dallas, Texas 75201  
Attention: Corporate Trust, Municipal and Escrow Services  
Re: Cinemark USA, Inc.

The Company, the Guarantors or the Trustee, by notice to the other may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be in writing and shall be deemed to have been duly given when received.

Any notice or communication to a Holder shall be sent to its address shown on the register kept by the Registrar. Any notice or communication shall also be so sent to any Person described in TIA § 313(c), to the extent required by the TIA. Failure to send a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

**SECTION 12.03. Communication by Holders of Notes with Other Holders of Notes.** Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

**SECTION 12.04. Certificate and Opinion as to Conditions Precedent.** Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

- (a) an Officers' Certificate (which shall include the statements set forth in Section 12.05) stating that, in the opinion of the signers, all conditions precedent (including any covenants compliance with which constitutes a condition precedent) provided for in this Indenture relating to the proposed action have been satisfied;
- (b) an Opinion of Counsel (which shall include the statements set forth in Section 12.05) stating that, in the opinion of such counsel, all such conditions precedent (including any covenants compliance with which constitutes a condition precedent) have been satisfied.

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 eligible and qualified Persons as to other matters, and any such Person may certify or given 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 related 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 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 the information on which counsel is relying 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; and

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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 12.05. Statements Required in Certificate or Opinion** Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) shall comply with the provisions of TIA § 314(e) and shall include:

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



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**SECTION 12.06. Rules by Trustee and Agents.** The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

**SECTION 12.07. No Personal Liability of Directors, Officers, Employees and Stockholders** No director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such, shall have any liability for any obligations of the Company or any Guarantor under the Notes, this Indenture, any Subsidiary Guarantees or the Registration Rights Agreement or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

**SECTION 12.08. Governing Law.** THIS INDENTURE, THE NOTES AND THE SUBSIDIARY GUARANTEES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

**SECTION 12.09. No Adverse Interpretation of Other Agreements** This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

**SECTION 12.10. Successors.** All agreements of the Company in this Indenture and the Notes and the Guarantors in this Indenture shall bind their successors. All agreements of the Trustee in this Indenture shall bind its successors.

**SECTION 12.11. Severability.** In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby to the extent permitted by applicable law.

**SECTION 12.12. Counterpart Originals.** The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

**SECTION 12.13. Table of Contents, Headings, Etc.** The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

[Signatures on following pages]

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

CINEMARK USA, INC.  
SUNNYMEAD CINEMA CORP.  
CINEMARK PROPERTIES, INC.  
GREELEY HOLDINGS, INC.  
TRANS TEXAS CINEMA, INC.  
CINEMARK PARTNERS I, INC.  
MULTIPLEX SERVICES, INC.  
CNMK TEXAS PROPERTIES, LLC  
CINEMARK CONCESSIONS, LLC  
CENTURY THEATRES, INC.  
MARIN THEATRE MANAGEMENT, LLC  
CENTURY THEATRES NG, LLC  
CINEARTS, LLC  
CINEARTS SACRAMENTO, LLC  
CORTE MADERA THEATRES, LLC  
NOVATO THEATRES, LLC  
SAN RAFAEL THEATRES, LLC  
NORTHBAY THEATRES, LLC  
CENTURY THEATRES SUMMIT SIERRA, LLC  
CENTURY THEATRES SEATTLE, LLC  
CNMK INVESTMENTS, INC.

By: /s/ Michael D. Cavalier  
Name: Michael D. Cavalier  
Title: Senior Vice President – General  
Counsel

[CUSA - Signature Page to the Indenture]

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WELLS FARGO BANK, N.A., as Trustee

By: /s/ Patrick T. Giordano

Name: Patrick T. Giordano

Title: Vice President

[CUSA - Signature Page to the Indenture]

*[Insert the Global Note Legend, if applicable, pursuant to the provisions of the Indenture]*\*

*[Insert the Private Placement Legend, if applicable, pursuant to the provisions of the Indenture]*

*[Insert the Regulation S Legend, if applicable, pursuant to the provisions of the Indenture]*

*[Insert the Regulation S Temporary Global Note Legend, if applicable, pursuant to the provisions of the Indenture]*

*[Insert the ERISA Legend, pursuant to the provisions of the Indenture]*

CUSIP No.  
ISIN No.

[Face of Note]

CINEMARK USA, INC.

5.125% Senior Notes due 2022

No. Principal Amount \$ [or such greater or lesser amount as may be indicated on the Schedule of Exchanges of Interests in the Global Note attached hereto]\*

Cinemark USA, Inc., a Texas corporation (the "Company"),

promises to pay to , or registered assigns,

the principal sum of Dollars on December 15, 2022 [or such greater or lesser amount as may be indicated on the Schedule of Exchanges of Interests in the Global Note attached hereto]\*.

Interest Payment Dates: June 15 and December 15, commencing June 15, 2013

Record Dates: June 1 and December 1

Additional provisions of this Note are set forth on the other side of this Note.

Dated:

\* If this Note is a Global Note, include this provision.

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

Name:

Title:

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TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the [Global]\* Notes referred  
to in the within-mentioned Indenture:

WELLS FARGO BANK, N.A., as Trustee

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

\* If this Note is a Global Note, include this provision.

[FORM OF REVERSE OF NOTES]

5.125% Senior Notes due 2022

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. Interest. Cinemark USA, Inc., a Texas corporation (the “Company”), promises to pay interest on the principal amount of this Note at the rate of 5.125% per annum. Interest on the Notes will accrue at the rate of 5.125% per annum and the Company will pay interest semi-annually in arrears on June 15 and December 15 of each year, commencing June 15, 2013 or if any such day is not a Business Day, on the next succeeding Business Day (each an “Interest Payment Date”). Interest on the Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from December 18, 2012. The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at the rate then in effect; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest and Additional Interest, if any, (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

2. Method of Payment. The Company shall pay interest on the Notes (except defaulted interest) and Additional Interest, if any, to the Persons who are registered Holders of Notes at the close of business on the June 1 or December 1 immediately preceding the Interest Payment Date (each, a “Record Date”), even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture. The Notes shall be payable as to principal or premium, if any, Additional Interest, if any, or interest at the office or agency of the Company maintained for such purpose within the City and State of New York (which may be an office of the Paying Agent), or, at the option of the Company, payment of interest and Additional Interest, if any, may be made by check mailed to the Holders at their addresses set forth in the register of Holders, and *provided* that payment by wire transfer of immediately available funds shall be required with respect to principal of or premium, if any, Additional Interest, if any, or interest on the Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to an account in the United States to the Company or the Paying Agent prior to the applicable Record Date. Such payment shall be in such coin or currency of the United States as at the time of payment is legal tender for payment of public and private debts.

3. Paying Agent and Registrar. Initially, Wells Fargo Bank, N.A., the Trustee under the Indenture, shall act as Paying Agent and Registrar. The Company may change any Paying Agent or Registrar without prior notice to any Holder. The Company or any of its Subsidiaries may act in any such capacity.

4. Indenture. The Company issued the Notes under an Indenture, dated as of December 18, 2012 (as such may be amended or supplemented from time to time, the “Indenture”), among the Company, the Guarantors and the Trustee. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (15 U.S. Code §§ 77aaa-77bbb). The Notes are subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Notes are obligations of the Company initially in the aggregate principal amount of \$400,000,000. Subject to compliance with Section 2.13 and Section 4.09 of the Indenture, the Company is permitted to issue Additional Notes under the Indenture in an unlimited principal amount. Any such Additional Notes that

are actually issued shall be treated as issued and outstanding Notes (and of the same class as the Initial Notes) for all purposes of the Indenture, unless the context clearly indicates otherwise. The Notes are Guaranteed by certain Subsidiaries of the Company pursuant to the Indenture.

#### 5. Optional Redemption.

Except as described below, the Notes will not be redeemable at the Company's option prior to December 15, 2017.

(a) At any time prior to December 15, 2015, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under the Indenture (including any Additional Notes) at a redemption price of 105.125% of the principal amount thereof, plus accrued and unpaid interest and Additional Interest, if any, to the redemption date, with funds in an amount equal to the net cash proceeds of one or more Equity Offerings by the Company, *provided* that: (i) at least 65% of the principal amount of Notes issued under the Indenture (including any Additional Notes) remains outstanding immediately after the occurrence of such redemption (excluding Notes held by the Company or any of its Subsidiaries); and (ii) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(b) On and after December 15, 2017, the Company may redeem all or a part of the Notes at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest and Additional Interest, if any, on the Notes redeemed, to the applicable redemption date, if redeemed during the 12-month period beginning on December 15 of the years indicated below:

<u>YEAR</u>	<u>Percentage</u>
2017	102.563%
2018	101.708%
2019	100.854%
2020 and thereafter	100.000%

(c) At any time and from time to time prior to December 15, 2017, the Company may, at its option, redeem all or a portion of the Notes at a redemption price equal to 100% of the principal amount thereof plus the Applicable Premium with respect to the Notes plus accrued and unpaid interest and Additional Interest, if any, thereon to the redemption date. Notice of redemption need not set forth the Applicable Premium but only the manner of calculation of the redemption price. The Indenture provides that, with respect to any such redemption, the Company will notify the Trustee of the Applicable Premium with respect to the Notes promptly after the calculation and that the Trustee will not be responsible for such calculation.

(d) The Company shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

#### 6. Repurchase at Option of Holder.

If a Change of Control occurs, the Company shall be required to make an offer to each Holder to repurchase all or any part (equal to \$1,000 in principal amount or an integral multiple thereof) of such Holder's Notes pursuant to the terms set forth in the Indenture (the "Change of Control Offer") at an offer price in cash equal to 101% of the principal amount thereof plus accrued and unpaid interest and Additional Interest thereon, if any, to the date of repurchase. Within 30 days following any Change of Control, the Company shall send a notice to each Holder setting forth the procedures governing the Change of Control Offer as required by the Indenture.



7. Notice of Redemption. Notice of redemption shall be sent at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be sent more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture. Notes in denominations larger than \$2,000 aggregate principal amount may be redeemed in part but only in whole multiples of \$1,000, unless all of the Notes held by a Holder are to be redeemed.

8. Denominations, Transfer, Exchange. The Notes are in registered form without coupons in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Company need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a Record Date and the corresponding Interest Payment Date.

9. Persons Deemed Owners. The registered Holder of a Note may be treated as its owner for all purposes.

10. Amendment, Supplement and Waiver. The provisions governing amendment, supplement and waiver of any provision of the Indenture, the Notes and the Subsidiary Guarantees are set forth in Article 9 of the Indenture.

11. Defaults and Remedies. The Events of Default relating to the Notes are set forth in Section 6.01 of the Indenture.

12. Trustee Dealings with Company. Subject to Article 7 of the Indenture, the Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not the Trustee.

13. No Recourse Against Others. No director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or any Guarantor under the Notes, the Indenture, any Subsidiary Guarantees or the Registration Rights Agreement or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

15. Authentication. This Note shall not be valid until authenticated by the manual signature of the Trustee or an Authenticating Agent.

16. Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with rights of survivorship and not as tenants in common), CUST (= Note Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

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17. Registration Rights Agreement. In addition to the rights provided to Holders of Notes under the Indenture, Holders of Restricted Global Notes and Restricted Definitive Notes shall have all the rights set forth in the Registration Rights Agreement, among the Company, the Guarantors and the Initial Purchasers.

18. CUSIP, ISIN or Other Similar Numbers. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP, ISIN or other similar numbers to be printed on the Notes and the Trustee may use CUSIP, ISIN or other similar numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

ASSIGNMENT FORM

To assign this Note, fill in the form below and have your signature guaranteed: (I) or (we) assign and transfer this Note to

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

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

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

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

Your Name: \_\_\_\_\_  
(Print your name exactly as it appears on the face of this Note)

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

Signature Guarantee\*: \_\_\_\_\_

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

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Company pursuant to Section 4.15 of the Indenture, check the box below:

Section 4.15

If you want to elect to have only part of the Note purchased by the Company pursuant to Section 4.15 of the Indenture, state the amount you elect to have purchased:

\$

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

Your Signature: \_\_\_\_\_

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

Tax Identification No: \_\_\_\_\_

Signature Guarantee\*: \_\_\_\_\_

(\* Participant in a Recognized Signature Guarantee Medallion Program)

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SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE\*

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

<u>Date of Exchange</u>	<u>Amount of decrease in Principal Amount of this Global Note</u>	<u>Amount of increase in Principal Amount of this Global Note</u>	<u>Principal Amount of this Global Note following such decrease (or increase)</u>	<u>Signature of authorized officer of Trustee or Note Custodian</u>
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\* Include only if this Note is a Global Note

FORM OF CERTIFICATE OF TRANSFER

Cinemark USA, Inc.  
3900 Dallas Parkway  
Suite 500  
Plano, TX 75093

Wells Fargo Bank, N.A.  
1445 Ross Ave, 2nd Floor  
MAC: T5303-022  
Dallas, Texas 75202  
Attention: Corporate Trust Services

Re: 5.125% Senior Notes due 2022

Reference is hereby made to the Indenture, dated as of December 18, 2012 (as such may be amended or supplemented from time to time, the "Indenture"), among Cinemark USA, Inc., as issuer (the "Company"), the Guarantors party thereto and Wells Fargo Bank, N.A., as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

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

1.  CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN A 144A GLOBAL NOTE OR A DEFINITIVE NOTE PURSUANT TO RULE 144A. The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believed and believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the 144A Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

2.  CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE REGULATION S TEMPORARY GLOBAL NOTE, THE REGULATION S GLOBAL NOTE OR A DEFINITIVE NOTE PURSUANT TO REGULATION S. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been

made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Distribution Compliance Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Global Note, the Temporary Regulation S Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

3.  CHECK AND COMPLETE IF TRANSFEREE WILL TAKE DELIVERY OF A DEFINITIVE NOTE PURSUANT TO ANY PROVISION OF THE SECURITIES ACT OTHER THAN RULE 144A OR REGULATION S. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

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

or

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

or

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

4.  CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE OR AN UNRESTRICTED DEFINITIVE NOTE.

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

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

(c)  CHECK IF TRANSFER IS PURSUANT TO OTHER EXEMPTION. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

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

\_\_\_\_\_  
[Insert Name of Transferor]

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

Name:

Title:

Dated: \_\_\_\_\_, \_\_\_\_\_



ANNEX A TO CERTIFICATE OF TRANSFER

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

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

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

2. After the Transfer the Transferee will hold:

[CHECK ONE]

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

in accordance with the terms of the Indenture.

## FORM OF CERTIFICATE OF EXCHANGE

Cinemark USA, Inc.  
3900 Dallas Parkway  
Suite 500  
Plano, TX 75093

Wells Fargo Bank, N.A.  
1445 Ross Ave, 2nd Floor  
MAC: T5303-022  
Dallas, Texas 75202  
Attention: Corporate Trust Services

Re: 5.125% Senior Notes due 2022

(CUSIP )

Reference is hereby made to the Indenture, dated as of December 18, 2012 (as such may be amended or supplemented from time to time, the "Indenture"), between Cinemark USA, Inc., as issuer (the "Company"), the Guarantors party thereto and Wells Fargo Bank, N.A., as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

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

1. EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN A RESTRICTED GLOBAL NOTE FOR UNRESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN AN UNRESTRICTED GLOBAL NOTE

(a)  CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the "Securities Act"), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(b)  CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO UNRESTRICTED DEFINITIVE NOTE In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(c)  CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE In connection with the Owner's Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

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

2. EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES FOR RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES

(a)  CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO RESTRICTED DEFINITIVE NOTE In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

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

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

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[Insert Name of Owner]

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

Name:  
Title:

Dated: \_\_\_\_\_, \_\_\_\_\_

## FORM OF SUPPLEMENTAL INDENTURE

SUPPLEMENTAL INDENTURE (this "Supplemental Indenture") dated as of \_\_\_\_\_, 20\_\_\_\_, among [GUARANTOR] (the "New Guarantor"), Cinemark USA, Inc., a Texas corporation (together with its successors and assigns, the "Company"), and Wells Fargo Bank, N.A., as trustee under the Indenture referred to below (the "Trustee").

## WITNESSETH:

WHEREAS the Company, the existing guarantors (the "Guarantors") and the Trustee are parties to that certain Indenture (as such has been amended or supplemented to the date hereof, the "Indenture") dated as of December 18, 2012, providing for the issuance of the Company's 5.125% Senior Notes due 2022 (the "Notes");

WHEREAS Section 4.16 of the Indenture provides that the Company shall cause the New Guarantor to execute and deliver to the Trustee a supplemental indenture pursuant to which the New Guarantor shall unconditionally guarantee all the Company's obligations under the Notes and the Indenture pursuant to a Subsidiary Guarantee on the terms and conditions set forth herein; and

WHEREAS pursuant to Section 9.01 of the Indenture, the Trustee, the Company and the New Guarantor are authorized to execute and deliver this Supplemental Indenture;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the New Guarantor, the Company and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.
2. Agreement to be Bound. The New Guarantor hereby becomes a party to the Indenture as a Guarantor and as such will have all of the rights and be subject to all of the obligations and agreements of a Guarantor under the Indenture. The New Guarantor agrees to be bound by all of the provisions of the Indenture applicable to a Guarantor and to perform all of the obligations and agreements of a Guarantor under the Indenture.
3. Guarantee. The New Guarantor hereby, on a joint and several basis with all of the existing Guarantors, fully, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety, to each Holder and the Trustee, the payment and performance of the Obligations of a Guarantor pursuant to and on the terms and subject to the conditions set forth in the Indenture, including but not limited to Article 11 thereof.
4. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly supplemented hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder shall be bound hereby.
5. Governing Law. **THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.**

6. Trustee Makes No Representation. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture. The Trustee shall not be responsible in any manner whatsoever for or with respect to any of the recitals or statements contained herein, all of which recitals or statements are made solely by the Company and the New Guarantor, and the Trustee makes no representation with respect to any such matters.

7. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. It is the express intent of the parties to be bound by the exchange of signatures on this Supplemental Indenture via telecopy or other form of electronic transmission.

8. Effect of Headings. The section headings herein are for convenience only and shall not effect the construction thereof.

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

[NEW GUARANTOR]

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

CINEMARK USA, INC.

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

WELLS FARGO BANK, N.A., as Trustee

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

**EXCHANGE AND REGISTRATION RIGHTS AGREEMENT**

Dated as of December 18, 2012

by and among

**CINEMARK USA, INC.**

**EACH OF THE GUARANTORS LISTED  
ON THE SIGNATURE PAGES HEREIN**

and

**BARCLAYS CAPITAL INC.  
MORGAN STANLEY & CO. LLC  
DEUTSCHE BANK SECURITIES INC.  
WELLS FARGO SECURITIES, LLC  
NOMURA SECURITIES INTERNATIONAL, INC.**

This Exchange and Registration Rights Agreement (this "Agreement") is made and entered into as of December 18, 2012 by and among Cinemark USA, Inc., a Texas corporation ("Cinemark"), certain of Cinemark's subsidiaries signatory hereto as guarantors (the "Guarantors") and Barclays Capital Inc., Morgan Stanley & Co. LLC, Deutsche Bank Securities Inc., Wells Fargo Securities, LLC and Nomura Securities International, Inc. (each, a "Purchaser" and collectively, the "Purchasers").

Pursuant to the Purchase Agreement, dated December 4, 2012 (the "Purchase Agreement"), among Cinemark, the Guarantors and the Purchasers, the Purchasers have agreed to purchase the aggregate principal amount of Cinemark's 5.125% Senior Notes due 2022 (the "Notes") set forth on Schedule I thereto which shall be jointly and severally guaranteed on a senior basis by each of the Guarantors.

In order to induce the Purchasers to purchase the Notes, Cinemark and each of the Guarantors have agreed to provide the registration rights set forth in this Agreement. The execution and delivery of this Agreement is a condition to the obligations of the Purchasers set forth in Section 5 of the Purchase Agreement.

The parties hereby agree as follows:

## **SECTION 1. DEFINITIONS**

As used in this Agreement, the following capitalized terms shall have the following meanings:

Act: The Securities Act of 1933, as amended.

Additional Interest: As defined in Section 5 hereof.

Advice: As defined in Section 6(d) hereof.

Applicable Securities: Each of the Notes, until the earliest to occur, with respect to a particular Note, of (a) the date on which such Note is exchanged in the Exchange Offer and entitled to be resold to the public by the Holder thereof without complying with the prospectus delivery requirements of the Act, (b) the date on which such Note has been effectively registered under the Act and disposed of in accordance with a Shelf Registration Statement and (c) the date such Note ceases to be outstanding.

Broker-Dealer: Any broker or dealer registered under the Exchange Act.

Business Day: Any day except a Saturday, Sunday or other day in the City of New York on which banks are authorized to close.

Closing Date: The date of this Agreement.

Commission: The Securities and Exchange Commission.



Consummate: An Exchange Offer shall be deemed “Consummated” for purposes of this Agreement upon the occurrence of (i) the filing and effectiveness under the Act of the Exchange Offer Registration Statement relating to the Exchange Notes to be issued in the Exchange Offer, (ii) the maintenance of such Exchange Offer Registration Statement continuously effective and the keeping of the Exchange Offer open for a period not less than the minimum period required pursuant to Section 3(b) hereof, and (iii) the delivery by Cinemark to the Trustee under the Indenture of the Exchange Notes in the same aggregate principal amount as the aggregate principal amount of the Notes that were validly tendered by Holders thereof pursuant to the Exchange Offer.

Effectiveness Target Date: As defined in Section 5 hereof.

Exchange Act: The Securities Exchange Act of 1934, as amended.

Exchange Notes: Cinemark’s 5.125% Senior Notes due 2022 to be issued pursuant to the Indenture in the Exchange Offer.

Exchange Offer: The registration by Cinemark and the Guarantors under the Act of the Exchange Notes pursuant to an Exchange Offer Registration Statement pursuant to which Cinemark and the Guarantors offer the Holders of all outstanding Applicable Securities the opportunity to exchange all such outstanding Applicable Securities held by such Holders for Exchange Notes in an aggregate principal amount equal to the aggregate principal amount of the Applicable Securities validly tendered in such exchange offer by such Holders.

Exchange Offer Registration Statement: The Registration Statement relating to the Exchange Offer, including the related Prospectus.

Exempt Resales: The transactions in which the Purchasers propose to sell the Notes to certain “qualified institutional buyers,” as such term is defined in Rule 144A under the Act, and outside the United States in reliance upon Regulation S under the Act.

FINRA: The Financial Industry Regulatory Authority, Inc.

Free Writing Prospectus: Each free writing prospectus (as defined in Rule 405 under the Act) prepared by or on behalf of Cinemark or used or referred to by Cinemark in connection with the sale of the Securities.

Holder: As defined in Section 2(b) hereof.

Indenture: The Indenture, dated as of December 18, 2012, among Cinemark, the Guarantors and Wells Fargo Bank, N.A., as trustee (the “Trustee”), pursuant to which the Securities are to be issued, as such Indenture is amended or supplemented from time to time in accordance with the terms thereof.

Issue Date: The date on which the Notes are originally issued under the Indenture.

Losses: As defined in Section 8(a) hereof.

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Notes: As defined in the preamble hereto.

Person: An individual, partnership, corporation, limited liability company, joint venture, association, trust or other organization whether or not a legal entity, or a government or agency or political subdivision thereof.

Prospectus: The prospectus, including any Free Writing Prospectus, included in a Registration Statement, as amended or supplemented by any prospectus supplement and by all other amendments thereto, including post-effective amendments and all material incorporated by reference into such Prospectus.

Purchase Agreement: As defined in the preamble hereto.

Purchaser: As defined in the preamble hereto.

Registration Default: As defined in Section 5 hereof.

Registration Statement: Any registration statement of Cinemark and the Guarantors relating to (a) an offering of Exchange Notes pursuant to an Exchange Offer or (b) the registration for resale of Applicable Securities pursuant to the Shelf Registration Statement, which is filed pursuant to the provisions of this Agreement, in each case, including the Prospectus included therein, all amendments and supplements thereto (including post-effective amendments) and all exhibits and material incorporated by reference therein.

Securities: The Notes and the Exchange Notes.

Shelf Filing Deadline: As defined in Section 4(a)(x) hereof.

Shelf Registration: A registration effected by the filing of a Shelf Registration Statement pursuant to Section 4 hereof.

Shelf Registration Statement: As defined in Section 4(a)(x) hereof.

TIA: The Trust Indenture Act of 1939 as in effect on the date of the Indenture.

Underwritten Registration or Underwritten Offering: A registration in which securities of Cinemark and the Guarantors are sold to an underwriter for reoffering to the public.

## **SECTION 2. SECURITIES SUBJECT TO THIS AGREEMENT**

(a) Applicable Securities. The Securities entitled to the benefits of this Agreement are the Applicable Securities.

(b) Holders of Applicable Securities. A Person is deemed to be a holder of Applicable Securities (each, a "Holder") whenever such Person owns Applicable Securities.

### SECTION 3. REGISTERED EXCHANGE OFFER

(a) Unless the Exchange Offer shall not be permissible under applicable law or Commission policy (so long as the procedures set forth in Section 6(a) below are being or have been complied with), Cinemark and the Guarantors shall (i) use their commercially reasonable best efforts to cause to be filed with the Commission, not later than 120 days after the Closing Date, the Exchange Offer Registration Statement under the Act relating to the Exchange Notes and the Exchange Offer, (ii) use their commercially reasonable best efforts to cause such Exchange Offer Registration Statement to be declared effective by the Commission at the earliest practicable time, but not later than 210 days after the Closing Date, (iii) in connection with the foregoing, (A) file all pre-effective amendments to such Exchange Offer Registration Statement as may be necessary in order to cause such Exchange Offer Registration Statement to become effective, (B) if applicable, file a post-effective amendment to such Exchange Offer Registration Statement pursuant to Rule 430A under the Act and (C) cause all necessary filings in connection with the registration and qualification of the Exchange Notes to be made under the Blue Sky laws of such jurisdictions as are necessary to permit Consummation of the Exchange Offer, and (iv) upon the effectiveness of such Exchange Offer Registration Statement, commence and use their commercially reasonable best efforts to Consummate the Exchange Offer. The Exchange Offer shall be on an appropriate form permitting registration of the Exchange Notes to be offered in exchange for the Applicable Securities and to permit resales of Securities held by Broker-Dealers as contemplated by Section 3(c) below. If, after such Exchange Offer Registration Statement initially is declared effective by the Commission, the Exchange Offer or the issuance of Exchange Notes thereunder or the sale of Applicable Securities pursuant thereto as contemplated by Section 3(c) below is interfered with by any stop order, injunction or other order or requirement of the Commission or any other governmental agency or court, such Exchange Offer Registration Statement shall be deemed not to have become effective for purposes of this Agreement during the period that such stop order, injunction or other similar order or requirement shall remain in effect.

(b) Cinemark and the Guarantors shall use their commercially reasonable best efforts to cause the Exchange Offer Registration Statement to be effective continuously and shall keep the Exchange Offer open for a period of not less than the minimum period required under applicable federal and state securities laws to Consummate the Exchange Offer; *provided, however*, that in no event shall such period be less than 20 Business Days. Cinemark and the Guarantors shall cause the Exchange Offer to comply with all applicable federal and state securities laws. No securities other than the Securities shall be included in the Exchange Offer Registration Statement. Unless the Exchange Offer shall not be permissible under applicable law or Commission policy, Cinemark and the Guarantors shall use their commercially reasonable best efforts to cause the Exchange Offer to be Consummated on the earliest practicable date after the Exchange Offer Registration Statement has become effective, but not later than 30 days thereafter.

(c) Cinemark shall indicate in a "Plan of Distribution" section contained in the Prospectus included in the Exchange Offer Registration Statement that any Broker-Dealer who holds Notes that are Applicable Securities and that were acquired for its own account as a result of market-making activities or other trading activities (other than Applicable Securities acquired

directly from Cinemark), may exchange such Notes pursuant to the Exchange Offer; *provided, however*, such Broker-Dealer may be deemed to be an “underwriter” within the meaning of the Act and must, therefore, deliver a prospectus meeting the requirements of the Act in connection with any resales of the Exchange Notes received by such Broker-Dealer in the Exchange Offer, which prospectus delivery requirement may be satisfied by the delivery by such Broker-Dealer of the Prospectus contained in the Exchange Offer Registration Statement. Such “Plan of Distribution” section shall also contain all other information with respect to such resales by Broker-Dealers that the Commission may require in order to permit such resales pursuant thereto, but such “Plan of Distribution” shall not name any such Broker-Dealer or disclose the amount of Securities held by any such Broker-Dealer except to the extent required by the Commission.

Cinemark and the Guarantors shall use their commercially reasonable best efforts to keep the Exchange Offer Registration Statement continuously effective, supplemented and amended as required by the provisions of Section 6(c) below to the extent necessary to ensure that it is available for resales of Securities acquired by Broker-Dealers for their own accounts as a result of market-making activities or other trading activities, and to ensure that it conforms with the requirements of this Agreement, the Act and the policies, rules and regulations of the Commission as announced from time to time, for a period of twelve months from the date on which the Exchange Offer Registration Statement is declared effective.

Cinemark shall provide sufficient copies of the latest version of such Prospectus to Broker-Dealers promptly upon request at any time during such period in order to facilitate such resales.

#### **SECTION 4. SHELF REGISTRATION**

(a) Shelf Registration. If (i) Cinemark and the Guarantors are not required to file an Exchange Offer Registration Statement or consummate the Exchange Offer because the Exchange Offer is not permitted by applicable law or Commission policy (so long as the procedures set forth in Section 6(a) below are being or have been complied with) or (ii) any Holder of Applicable Securities shall notify Cinemark prior to the 20th day following the Consummation of the Exchange Offer that (A) such Holder is prohibited by a change in applicable law or Commission policy from participating in the Exchange Offer, (B) such Holder may not resell the Exchange Notes to be acquired by it in the Exchange Offer to the public without delivering a prospectus and that the Prospectus contained in the Exchange Offer Registration Statement is not appropriate or available for such resales by such Holder or (C) such Holder is a Broker-Dealer and owns Notes acquired directly from Cinemark or an affiliate of Cinemark, then Cinemark and the Guarantors shall:

(x) use their commercially reasonable best efforts to cause to be filed a shelf registration statement pursuant to Rule 415 under the Act, which may be an amendment to the Exchange Offer Registration Statement (in either event, the “Shelf Registration Statement”), on or prior to the 30th day after the obligation to file such Shelf Registration Statement arises (and in any event within 240 days after the Closing Date) (the “Shelf Filing Deadline”), which Shelf Registration Statement shall provide for resales of all Applicable Securities, the Holders of which shall have provided the information required pursuant to Section 4(b) hereof; and

(y) use their commercially reasonable best efforts to cause such Shelf Registration Statement to be declared effective by the Commission on or before the 210th day after the obligation to file such Shelf Registration Statement arises.

Cinemark and the Guarantors shall use their commercially reasonable best efforts to keep such Shelf Registration Statement continuously effective, supplemented and amended as required by the provisions of Sections 6(b) and (c) hereof to the extent necessary to ensure that it is available for resales of Securities by the Holders of Applicable Securities entitled to the benefit of this Section 4(a), and to ensure that it conforms with the requirements of this Agreement, the Act and the policies, rules and regulations of the Commission as announced from time to time, for a period of one year following the Closing Date.

(b) Provision by Holders of Certain Information in Connection with the Shelf Registration Statement No Holder of Applicable Securities may include any of its Applicable Securities in any Shelf Registration Statement pursuant to this Agreement unless and until such Holder furnishes to Cinemark in writing, within 20 Business Days after receipt of a request therefor, such information as Cinemark may reasonably request specified in Item 507 and Item 508 of Regulation S-K under the Act for use in connection with any Shelf Registration Statement or Prospectus or preliminary Prospectus included therein. Each Holder as to which any Shelf Registration Statement is being effected agrees to furnish promptly to Cinemark all information required to be disclosed in order to make the information previously furnished to Cinemark by such Holder not materially misleading. No Holder of Applicable Securities shall be entitled to Additional Interest pursuant to Section 5 hereof unless and until such Holder shall have used its best efforts to provide all such reasonably requested information.

#### **SECTION 5. ADDITIONAL INTEREST**

If (i) any of the Registration Statements required by this Agreement is not filed with the Commission on or prior to the date specified for such filing in this Agreement, (ii) any of such Registration Statements has not been declared effective by the Commission on or prior to the date specified for such effectiveness in this Agreement (the "Effectiveness Target Date"), (iii) the Exchange Offer has not been Consummated within 30 Business Days after the Effectiveness Target Date with respect to the Exchange Offer Registration Statement or (iv) any Registration Statement required by this Agreement is filed and declared effective but shall thereafter cease to be effective or fail to be usable for its intended purpose without being succeeded within two Business Days by a post-effective amendment to such Registration Statement that cures such failure and that is itself immediately declared effective (each such event referred to in clauses (i) through (iv) above, a "Registration Default"), Cinemark and the Guarantors hereby agree to pay, jointly and severally, additional cash interest ("Additional Interest") to each Holder of Applicable Securities. Such Additional Interest, with respect to the first 90-day period immediately following the occurrence of each such Registration Default, shall equal an increase in the annual interest rate on the Notes by 0.5%. The amount of Additional Interest will increase by an additional 0.5% per annum with respect to each subsequent 90-day

period relating to each such Registration Default until all Registration Defaults have been cured, up to a maximum amount of Additional Interest for all Registration Defaults of 1.0% per annum. The Securities will not accrue Additional Interest from and after the second anniversary of the Issue Date even if Cinemark is not in compliance with its obligations under this Agreement. Cinemark shall notify the Trustee within one Business Day after (i) each and every Registration Default and (ii) the date the Registration Default has been so cured. Cinemark and the Guarantors shall, jointly and severally, pay all accrued Additional Interest to Holders in New York, New York by wire transfer of immediately available funds or by federal funds check in the same manner as interest is paid under the Notes. Following the cure of all Registration Defaults relating to any particular Applicable Securities, the accrual of Additional Interest with respect to such Applicable Securities will cease. The parties agree that the obligation to pay Additional Interest will be the sole remedy of Holders with respect to damages arising from a Registration Default.

All obligations of Cinemark and the Guarantors set forth in the preceding paragraph that are outstanding with respect to any Applicable Security at the time such security ceases to be an Applicable Security shall survive until such time as all such obligations with respect to such Security shall have been satisfied in full.

#### **SECTION 6. REGISTRATION PROCEDURES**

(a) Exchange Offer Registration Statement. In connection with the Exchange Offer, Cinemark and the Guarantors shall comply with all of the provisions of Section 6(c) below, shall use their commercially reasonable best efforts to effect such exchange to permit the sale of Applicable Securities being sold in accordance with the intended method or methods of distribution thereof, and shall comply with all of the following provisions:

(i) If in the reasonable opinion of counsel to Cinemark there is a question as to whether the Exchange Offer is permitted by applicable law, Cinemark and the Guarantors hereby agree to seek a no-action letter or other favorable decision from the Commission, including oral advice from the staff of the Commission, allowing Cinemark and the Guarantors to consummate an Exchange Offer for such Notes. Cinemark and the Guarantors hereby agree to pursue the issuance of such a decision to the Commission staff level but shall not be required to take commercially unreasonable action to effect a change of Commission policy. In connection with the foregoing, Cinemark and the Guarantors hereby agree, however, to (A) participate in telephonic conferences with the Commission, (B) deliver to the Commission staff an analysis prepared by counsel to Cinemark setting forth the legal bases, if any, upon which such counsel has concluded that such an Exchange Offer should be permitted and (C) diligently pursue a resolution (which need not be favorable) by the Commission staff of such matters.

(ii) As a condition to its participation in the Exchange Offer pursuant to the terms of this Agreement, each Holder of Applicable Securities shall furnish, upon the request of Cinemark, prior to the consummation thereof, a written representation to Cinemark (which may be contained in the letter of transmittal contemplated by the Exchange Offer Registration Statement) to the effect that (A) it is not an affiliate of

Cinemark, (B) it is not engaged in, and does not intend to engage in, and has no arrangement or understanding with any person to participate in, a distribution of the Exchange Notes to be issued in the Exchange Offer and (C) it is acquiring the Exchange Notes in its ordinary course of business. Each Holder of Applicable Securities shall also furnish, upon the request of Cinemark, such representations as may be required to permit offers and sales of the Securities under state securities laws. Each Holder hereby acknowledges and agrees that any Broker-Dealer who acquired Notes directly from Cinemark or any affiliate of Cinemark and any such Holder intending to use the Exchange Offer to participate in a distribution of the securities to be acquired in the Exchange Offer (1) could not under Commission policy as in effect on the date of this Agreement rely on the position of the Commission enunciated in Morgan Stanley and Co., Inc. (available June 5, 1991) and Exxon Capital Holdings Corporation (available May 13, 1988), as interpreted in the Commission's letter to Shearman & Sterling dated July 2, 1993, and similar no-action letters (including any no-action letter obtained pursuant to clause (i) above), and (2) must comply with the registration and prospectus delivery requirements of the Act in connection with a secondary resale transaction and that such a secondary resale transaction should be covered by an effective registration statement containing the selling security holder information required by Item 507 or 508, as applicable, of Regulation S-K if the resales are of Exchange Notes obtained by such Holder in exchange for Notes acquired by such Holders directly from Cinemark.

(iii) Prior to effectiveness of the Exchange Offer Registration Statement, Cinemark and the Guarantors shall provide a supplemental letter to the Commission stating that Cinemark and the Guarantors are registering the Exchange Offer in reliance on the position of the Commission enunciated in Exxon Capital Holdings Corporation (available May 13, 1988), Morgan Stanley and Co., Inc. (available June 5, 1991) and, if applicable, any no-action letter obtained pursuant to clause (i) above. The supplemental letter shall include a representation that Cinemark and the Guarantors have not entered into any arrangement or understanding with any Person to distribute the Exchange Notes to be received in the Exchange Offer and that, to the best of Cinemark's information and belief, each Holder participating in the Exchange Offer is acquiring the Exchange Notes in its ordinary course of business and has no arrangement or understanding with any Person to participate in the distribution of the Exchange Notes received in the Exchange Offer.

(b) Shelf Registration Statement. In connection with the Shelf Registration Statement, Cinemark and the Guarantors shall comply with all the provisions of Section 6(c) below and shall use their commercially reasonable best efforts to effect such registration to permit the sale of the Applicable Securities being sold in accordance with the intended method or methods of distribution thereof in accordance with the provisions of Sections 4(a) and 6(c) hereof.

(c) General Provisions. In connection with any Registration Statement and any related Prospectus required by this Agreement to permit the sale or resale of Applicable Securities (including, without limitation, any Registration Statement and the related Prospectus required to permit resales of Securities by Broker-Dealers), Cinemark and the Guarantors shall:

(i) use their commercially reasonable best efforts to keep such Registration Statement continuously effective and provide all requisite financial statements for the period specified in Section 3 or 4 hereof, as applicable; upon the occurrence of any event that would cause any such Registration Statement or the Prospectus contained therein (A) to contain a material misstatement or omission or (B) not to be effective and usable for resale of Applicable Securities during the period required by this Agreement, Cinemark and the Guarantors shall file promptly an appropriate amendment to such Registration Statement, in the case of clause (A), correcting any such misstatement or omission, and, in the case of either clause (A) or (B), use their commercially reasonable best efforts to cause such amendment to be declared effective and such Registration Statement and the related Prospectus to become usable for their intended purpose(s) as soon as reasonably practicable thereafter;

(ii) prepare and file with the Commission such amendments and post-effective amendments to the Registration Statement as may be necessary to keep the Registration Statement effective for the applicable period set forth in Section 3 or 4 hereof, as applicable, or such shorter period as will terminate when all Applicable Securities covered by such Registration Statement have been exchanged or sold or until such Applicable Securities no longer constitute Applicable Securities or are no longer outstanding; cause the Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the Act, and to comply fully with the applicable provisions of Rules 424 and 430A under the Act in a timely manner; and comply with the provisions of the Act with respect to the disposition of all Applicable Securities covered by such Registration Statement during the applicable period in accordance with the intended method or methods of distribution by the sellers thereof set forth in such Registration Statement or supplement to the Prospectus;

(iii) advise promptly the underwriter(s), if any, and selling Holders and, if requested by such Persons, confirm such advice in writing, (A) when the Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to any Registration Statement or any post-effective amendment thereto, when the same has become effective, (B) of any request by the Commission for amendments to the Registration Statement or amendments or supplements to the Prospectus or for additional information relating thereto, (C) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement under the Act or of the suspension by any state securities commission of the qualification of the Applicable Securities for offering or sale in any jurisdiction, or the initiation of any proceeding for any of the preceding purposes or (D) of the existence of any fact or the happening of any event that makes any statement of a material fact made in the Registration Statement, the Prospectus, any amendment or supplement thereto, or any document incorporated by reference therein untrue, or that requires the making of any additions to or changes in the Registration Statement or the Prospectus in order to make the statements therein not misleading. If at any time the Commission shall issue any stop order suspending the effectiveness of the Registration Statement, or any state securities commission or other regulatory authority shall issue an order suspending the qualification or exemption from qualification of the Applicable Securities under state securities or Blue Sky laws, Cinemark and the Guarantors shall use their commercially reasonable best efforts to obtain the withdrawal or lifting of such order at the earliest practicable time;



(iv) furnish to the Purchasers, each selling Holder named in any Registration Statement or Prospectus and each of the underwriter(s) in connection with each such sale, if any, before filing with the Commission, copies of any Registration Statement or any Prospectus included therein or any amendments or supplements to any such Registration Statement or Prospectus if requested by such person, which documents will be subject to the review of such Holders and underwriter(s) in connection with each such sale, if any, for a period of at least five Business Days, and Cinemark and the Guarantors will not file any such Registration Statement or Prospectus or any amendment or supplement to any such Registration Statement or Prospectus to which a selling Holder of Applicable Securities covered by such Registration Statement or the underwriter(s) in connection with each such sale, if any, shall reasonably object within five Business Days after the receipt thereof. A selling Holder or underwriter, if any, shall be deemed to have reasonably objected to such filing if such Registration Statement, amendment, Prospectus or supplement, as applicable, as proposed to be filed, contains a material misstatement or omission or fails to comply with the applicable requirements of the Act;

(v) promptly provide copies prior to the filing of any document that is to be incorporated by reference into a Registration Statement or Prospectus, if requested by any selling Holders or the underwriter(s), if any, within five Business Days after receipt of notification thereof from Cinemark, of such document to the selling Holders and to the underwriter(s), if any; make Cinemark's representatives available for discussion of such document and other customary due diligence matters; and include such information in such document prior to the filing thereof as such selling Holders or underwriter(s), if any, reasonably may request;

(vi) make available at reasonable times for inspection by the selling Holders, any underwriter participating in any disposition pursuant to such Registration Statement, and any attorney or accountant retained by such selling Holders or any of the underwriter(s), all financial and other records, pertinent corporate documents and properties of Cinemark and its subsidiaries, and cause Cinemark's officers, directors and employees to supply all information reasonably requested by any such Holder, underwriter, attorney or accountant in connection with such Registration Statement subsequent to the filing thereof and prior to its effectiveness;

(vii) if requested by any selling Holders or the underwriter(s) in connection with each such sale, if any, promptly include in any Registration Statement or Prospectus, pursuant to a supplement or post-effective amendment if necessary, such information as such selling Holders and such underwriter(s), if any, may reasonably request to have included therein, including, without limitation, information relating to the "Plan of Distribution" of the Applicable Securities, information with respect to the principal amount of Applicable Securities being sold to such underwriter(s), the purchase price being paid therefor and any other terms of the offering of the Applicable Securities to be sold in such offering; and make all required filings of such Prospectus supplement or post-effective amendment as soon as practicable after Cinemark is notified of the matters to be included in such Prospectus supplement or post-effective amendment;

(viii) use their commercially reasonable best efforts to cause the Applicable Securities covered by the Registration Statement to be rated with the appropriate rating agencies, if so requested by the Holders of a majority in aggregate principal amount of Notes covered thereby or the underwriter(s), if any;

(ix) furnish to each selling Holder and each of the underwriter(s), if any, without charge, at least one copy of the Registration Statement, as first filed with the Commission, and of each amendment thereto, including all documents incorporated by reference therein and all exhibits if so requested by such person;

(x) deliver to each selling Holder and each of the underwriter(s) in connection with each such sale, if any, without charge, as many copies of the Prospectus (including each preliminary prospectus) and any amendment or supplement thereto as such Persons may reasonably request; Cinemark and the Guarantors hereby consent to the use of the Prospectus and any amendment or supplement thereto by each of the selling Holders and each of the underwriter(s), if any, in connection with the offering and the sale of the Applicable Securities covered by the Prospectus or any amendment or supplement thereto;

(xi) enter into such agreements (including an underwriting agreement), and make such representations and warranties, and take all such other actions in connection therewith in order to expedite or facilitate the disposition of the Applicable Securities pursuant to any Registration Statement contemplated by this Agreement, all to such extent as may be reasonably acceptable to Cinemark and the Guarantors and reasonably requested by the Purchasers or by any Holder of Applicable Securities or any underwriter in connection with any sale or resale pursuant to any Registration Statement contemplated by this Agreement; and whether or not an underwriting agreement is entered into and whether or not the registration is an Underwritten Registration, Cinemark and each of the Guarantors shall:

(A) furnish to each Purchaser, each selling Holder and each underwriter, in such substance and scope as they may reasonably request and as are customarily made by issuers to underwriters in primary underwritten offerings, upon the date of the Consummation of the Exchange Offer and, if applicable, upon the effectiveness of the Shelf Registration Statement:

(1) a certificate, dated the date of Consummation of the Exchange Offer or the date of effectiveness of the Shelf Registration Statement, as the case may be, signed by (x) the President or any Vice President and (y) a principal financial or accounting officer of Cinemark and each of the Guarantors, confirming, as of the date thereof, the matters set forth in paragraph (h) of Section 5 of the Purchase Agreement and such other matters as such parties may reasonably request; *provided* that references to

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the "Offering Memorandum" in such certificate shall instead refer to the Prospectus and references to the "Disclosure Package" in such certificate shall instead refer to any time of sale information prepared in connection with such Exchange Offer or Shelf Registration Statement, as the case may be;

(2) an opinion, dated the date of Consummation of the Exchange Offer or the date of effectiveness of the Shelf Registration Statement, as the case may be, of counsel for Cinemark and the Guarantors, covering the matters set forth in paragraphs (c) and (d) of Section 5 of the Purchase Agreement and such other matters as such parties may reasonably request, and in any event including a statement to the effect that such counsel has participated in conferences with officers and other representatives of Cinemark, representatives of the independent public accountants for Cinemark, the Purchasers' representatives and the Purchasers' counsel at which the contents of such Registration Statement and the related Prospectus were discussed, although such counsel has not undertaken to investigate or independently verify and does not assume any responsibility for, the accuracy, completeness or fairness of such statements; and that such counsel advises that, on the basis of the foregoing (relying as to materiality to a large extent upon facts provided to such counsel by officers and other representatives of Cinemark and without independent check or verification), no facts came to such counsel's attention that caused such counsel to believe that the applicable Registration Statement, at the time such Registration Statement or any post-effective amendment thereto became effective, and, in the case of the Exchange Offer Registration Statement, as of the date of Consummation, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus contained in such Registration Statement as of its date and, in the case of the opinion dated the date of Consummation of the Exchange Offer, as of the date of Consummation, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Without limiting the foregoing, such counsel may state further that such counsel makes no comment with respect to, assumes no responsibility for, and has not independently verified, the accuracy, completeness or fairness of the financial statements, notes and schedules and other financial and statistical data included in any Registration Statement contemplated by this Agreement or the related Prospectus; and

(3) a customary comfort letter, dated as of the date of Consummation of the Exchange Offer or the date of effectiveness of the Shelf Registration Statement, as the case may be, from Cinemark's independent accountants, in the customary form and covering matters of

the type customarily covered in comfort letters by underwriters in connection with primary underwritten offerings, and affirming the matters set forth in the comfort letters delivered pursuant to Section 5(f) of the Purchase Agreement, without exception;

(B) set forth in full or incorporate by reference in the underwriting agreement, if any, the indemnification provisions and procedures of Section 8 hereof with respect to all parties to be indemnified pursuant to said Section;

(C) deliver such other documents and certificates as may be reasonably requested by such parties to evidence compliance with clause (A) above and with any customary conditions contained in the underwriting agreement or other agreement entered into by Cinemark and the Guarantors pursuant to this clause (xi), if any; and

(D) if at any time the representations and warranties of Cinemark and each of the Guarantors contemplated in clause (A)(1) above cease to be true and correct, Cinemark and each of the Guarantors shall so advise the Purchasers and the underwriter(s), if any, and each Holder promptly and, if requested by such Persons, shall confirm such advice in writing;

(xii) prior to any public offering of Applicable Securities, cooperate with the selling Holders, the underwriter(s), if any, and their respective counsel in connection with the registration and qualification of the Applicable Securities under the securities or Blue Sky laws of such jurisdictions as the selling Holders or underwriter(s), if any, may reasonably request and do any and all other acts or things necessary or advisable (including, without limitation, the imposition of such restrictions on offers or sales of the Securities as are referred to in Section 3(b) hereof) to enable the disposition in such jurisdictions of the Applicable Securities covered by the applicable Registration Statement; *provided, however*, that neither Cinemark nor any Guarantor shall be required to register or qualify as a foreign corporation where it is not now so qualified or to take any action that would subject it to the service of process in suits or to taxation, except as to matters and transactions relating to the Registration Statement, in any jurisdiction where it is not now so subject;

(xiii) shall issue, upon the request of any Holder of Notes covered by the Shelf Registration Statement, Exchange Notes having an aggregate principal amount equal to the aggregate principal amount of Notes surrendered to Cinemark by such Holder in exchange therefor or being sold by such Holder; such Exchange Notes to be registered in the name of such Holder or in the name of the purchaser(s) of such Exchange Notes, as the case may be; in return, the Notes held by such Holder shall be surrendered to Cinemark for cancellation;

(xiv) cooperate with the selling Holders and the underwriter(s), if any, to facilitate the timely preparation and delivery of certificates representing Applicable Securities to be sold and not bearing any restrictive legends; and to register such

Applicable Securities in such denominations (which denominations shall be of \$1,000 and integral multiples thereof) and such names as the Holders or the underwriter(s), if any, may request at least two Business Days prior to any such sale of Applicable Securities made by such underwriter(s);

(xv) use their commercially reasonable best efforts to cause the Applicable Securities covered by the Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter(s), if any, to consummate the disposition of such Applicable Securities;

(xvi) if any fact or event contemplated by Section 6(c)(iii)(D) above shall exist or have occurred, prepare a supplement or post-effective amendment to the Registration Statement or related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of Applicable Securities, the Prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading;

(xvii) provide a CUSIP number for all Applicable Securities not later than the effective date of the Registration Statement covering such Applicable Securities and provide the Trustee under the Indenture with printed certificates for the Applicable Securities which are in a form eligible for deposit with the Depository Trust Company;

(xviii) cooperate and assist in any filings required to be made with FINRA and in the performance of any due diligence investigation by any underwriter (including any "qualified independent underwriter") that is required to be retained in accordance with the rules and regulations of FINRA, and use their commercially reasonable best efforts to cause such Registration Statement to become effective and approved by such governmental agencies or authorities as may be necessary to enable the Holders selling Applicable Securities to consummate the disposition of such Applicable Securities;

(xix) otherwise use their commercially reasonable best efforts to comply with all applicable rules and regulations of the Commission, and make generally available to Holders, as soon as reasonably practicable, a consolidated earnings statement meeting the requirements of Rule 158 under the Act (which need not be audited) covering a 12-month period (A) beginning at the end of any fiscal quarter in which Applicable Securities are sold to underwriters in a firm or best efforts Underwritten Offering or (B) if not sold to underwriters in such an Underwritten Offering, commencing with the first month of Cinemark's first fiscal quarter commencing after the effective date of the Registration Statement;

(xx) cause the Indenture to be qualified under the TIA not later than the effective date of the first Registration Statement required by this Agreement, and, in connection therewith, cooperate, with the Trustee and the Holders of Securities to effect such changes to the Indenture as may be required for such Indenture to be so qualified in

accordance with the terms of the TIA; and execute, and use their commercially reasonable best efforts to cause the Trustee to execute, all documents that may be required to effect such changes and all other forms and documents required to be filed with the Commission to enable such Indenture to be so qualified in a timely manner;

(xxi) provide promptly to each Holder upon request each document filed with the Commission pursuant to the requirements of Section 13 or Section 15 of the Exchange Act;

(xxii) use their commercially reasonable best efforts to cause all Applicable Securities covered by the Registration Statement to be listed on each securities exchange on which similar securities issued by Cinemark are then listed if requested by the Holders of a majority in aggregate principal amount of Notes covered by such Registration Statement or the managing underwriter(s), if any; and

(xxiii) to the extent any Free Writing Prospectus is used, file with the Commission any Free Writing Prospectus that is required to be filed by Cinemark or the Guarantors with the Commission in accordance with the Act and to retain any Free Writing Prospectus not required to be filed.

(d) Restrictions on Holders. Each Holder agrees by acquisition of an Applicable Security that, upon receipt of any notice from Cinemark of the existence of any fact of the kind described in Section 6(c)(iii)(D) hereof, such Holder will forthwith discontinue disposition of Applicable Securities pursuant to the applicable Registration Statement until such Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 6(c)(xvi) hereof, or until it is advised in writing (the "Advice") by Cinemark that the use of the Prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated by reference in the Prospectus. If so directed by Cinemark, each Holder will deliver to Cinemark (at Cinemark's expense) all copies, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Applicable Securities that was current at the time of receipt of such notice. In the event Cinemark shall give any such notice, the time period regarding the effectiveness of such Registration Statement set forth in Section 3 or 4 hereof, as applicable, shall be extended by the number of days during the period from and including the date of the giving of such notice pursuant to Section 6(c)(iii)(D) hereof to and including the date when each selling Holder covered by such Registration Statement shall have received the copies of the supplemented or amended Prospectus contemplated by Section 6(c)(xvi) hereof or shall have received the Advice.

## **SECTION 7. REGISTRATION EXPENSES**

(a) All expenses incident to Cinemark and the Guarantors' performance of or compliance with this Agreement will be borne jointly and severally by Cinemark and the Guarantors, regardless of whether a Registration Statement becomes effective, including without limitation: (i) all registration and filing fees and expenses (including filings made by any Purchaser or Holder with FINRA (and, if applicable, the reasonable fees and expenses of any "qualified independent underwriter" and its counsel that may be required by the rules and

regulations of FINRA)); (ii) all fees and expenses incurred in connection with compliance with federal securities and state Blue Sky or securities laws; (iii) all expenses of printing (including printing certificates for the Exchange Notes to be issued in the Exchange Offer and printing of Prospectuses), messenger and delivery services and telephone; (iv) all fees and disbursements of counsel for Cinemark, and in accordance with Section 7(b) below, the Holders of Applicable Securities; (v) if applicable, all application and filing fees in connection with listing Securities on a national securities exchange or automated quotation system pursuant to the requirements hereof; and (vi) all fees and disbursements of independent certified public accountants of Cinemark (including the expenses of any special audit and comfort letters required by or incident to such performance).

Cinemark and the Guarantors will bear their internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expenses of any annual audit and the fees and expenses of any Person, including special experts, retained by Cinemark and/or any Guarantor.

(b) In connection with any Registration Statement required by this Agreement (including, without limitation, the Exchange Offer Registration Statement and the Shelf Registration Statement), Cinemark and the Guarantors will reimburse the Purchasers and the Holders of Applicable Securities being tendered in the Exchange Offer and/or resold pursuant to the "Plan of Distribution" contained in the Exchange Offer Registration Statement or registered pursuant to the Shelf Registration Statement, as applicable, for the reasonable fees and disbursements of not more than one counsel, which shall be Simpson Thacher & Bartlett LLP or such other counsel as may be chosen by the Holders of a majority in principal amount of the Applicable Securities for whose benefit such Registration Statement is being prepared.

## **SECTION 8. INDEMNIFICATION**

(a) Cinemark and the Guarantors agree, jointly and severally, to indemnify and hold harmless, to the fullest extent permitted by applicable law, each of the Holders, each person, if any, who controls any Holder within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act and the respective officers, directors, partners, employees, representatives and agents of each Holder or any controlling person, against any and all losses, liabilities, claims, damages and expenses whatsoever (including but not limited to reasonable attorneys' fees and any and all reasonable expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation) (collectively, "Losses"), joint or several, to which they or any of them may become subject under the Act, the Exchange Act or otherwise, insofar as such losses, liabilities, claims, damages or expenses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or Prospectus, or in any supplement thereto or amendment thereof, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that neither Cinemark nor any Guarantor will be liable in any such case to the extent, but only to the extent, that any such Loss arises out of or is based upon any such untrue statement

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or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to Cinemark and the Guarantors by or on behalf of any Holders expressly for use therein. This indemnity will be in addition to any liability which Cinemark or any Guarantor may otherwise have, including, under this Agreement.

(b) Each of the Holders agrees, severally and not jointly, to indemnify and hold harmless Cinemark, each of the Guarantors, each person, if any, who controls Cinemark or any Guarantor within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act and the respective officers, directors, partners, employees, representatives and agents of Cinemark or any Guarantor or any controlling person, against any and all Losses, joint or several, to which they or any of them may become subject under the Act, the Exchange Act or otherwise, insofar as such losses, liabilities, claims, damages or expenses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or Prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that any such loss, liability, claim, damage or expense arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to Cinemark and the Guarantors by or on behalf of such Holder expressly for use therein; *provided, however*, that in no case shall any Holder be liable or responsible for any amount in excess of the dollar amount of the proceeds received by such Holder upon the sale of the Securities giving rise to such indemnification obligation, unless such Losses are a result of the gross negligence or willful misconduct of such Holder as determined in a final judgment by a court of competent jurisdiction. This indemnity will be in addition to any liability which any Holder may otherwise have, including under this Agreement.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify each party against whom indemnification is to be sought, in writing of the commencement thereof (but the failure so to notify an indemnifying party shall not relieve it from any liability which it may have under this Section 8 except to the extent that it has been prejudiced in any material respect by such failure or from any liability which it may otherwise have). In case any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein, and to the extent it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party. Notwithstanding the foregoing, the indemnified party or parties shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such indemnified party or parties unless (i) the employment of such counsel shall have been authorized in writing by the indemnifying parties in connection with the defense of such action and the indemnifying party has agreed in writing to pay the fees and expenses of such counsel, (ii) the indemnifying parties shall not have employed counsel to take charge of the defense of such action within a reasonable



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time after notice of commencement of the action, or (iii) such indemnified party or parties shall have concluded, upon the advice of counsel, that there may be defenses available to it or them which are different from or additional to those available to one or all of the indemnifying parties (in which case the indemnifying parties shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), in any of which events such fees and expenses of counsel shall be borne by the indemnifying parties; *provided, however*, that the indemnifying party under subsection (a) or (b) above, shall only be liable for the legal expenses of one counsel (in addition to any local counsel) for all indemnified parties in each jurisdiction in which any claim or action is brought. Anything in this subsection to the contrary notwithstanding, an indemnifying party shall not be liable for any settlement of any claim or action effected without its written consent; *provided, however*, that such consent was not unreasonably withheld.

(d) In order to provide for contribution in circumstances in which the indemnification provided for in this Section 8 is for any reason held to be unavailable or is insufficient to hold harmless a party indemnified hereunder, Cinemark and the Guarantors, on the one hand, and each Holder, on the other hand, shall contribute to the aggregate losses, claims, damages, liabilities and expenses of the nature contemplated by such indemnification provision (including any investigation, legal and other expenses incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claims asserted, but after deducting in the case of losses, claims, damages, liabilities and expenses suffered by Cinemark and the Guarantors, any contribution received by Cinemark and the Guarantors from persons, other than the Holders, who may also be liable for contribution, including persons who control either Cinemark or any Guarantor within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act) to which Cinemark, any Guarantor and any Holder may be subject, in such proportion as is appropriate to reflect the relative benefits received by Cinemark and the Guarantors, on the one hand, and any such Holder, on the other hand, or, if such allocation is not permitted by applicable law or if indemnification is not available as a result of the indemnifying party not having received notice as provided in this Section 8, in such proportion as is appropriate to reflect not only the relative benefits referred to above but also the relative fault of Cinemark and the Guarantors, on the one hand, and the Holders, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by Cinemark and the Guarantors, on the one hand, and any Holder, on the other hand, shall be deemed to be in the same proportion as (x) the total proceeds from the offering of the Securities (net of discounts and commissions but before deducting expenses) received by Cinemark and the Guarantors and (y) the total proceeds received by such Holder upon its sale of Securities which would otherwise give rise to the indemnification obligation, respectively. The relative fault of Cinemark and the Guarantors, on the one hand, and of the Holders, on the other hand, 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 Cinemark and the Guarantors or the Holders and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. Cinemark, each of the Guarantors and each Holder agree that it would not be just and equitable if contribution pursuant to this Section 8 were determined by *pro rata* allocation or by any other method of allocation which does not take into account the equitable considerations

referred to above. Notwithstanding the provisions of this Section 8, (i) no Holder shall be required to contribute, in the aggregate, any amount in excess of the dollar amount by which the proceeds received by such Holder with respect to the sale of its Securities exceeds the amount of any damages which such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 8, each person, if any, who controls a Holder within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act and the respective officers, directors, partners, employees, representatives and agents of a Holder or any controlling person shall have the same rights to contribution as such Holder, and each person, if any, who controls Cinemark or any Guarantor within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act and the respective officers, directors, partners, employees, representatives and agents of Cinemark or any Guarantor or any controlling person shall have the same rights to contribution as Cinemark and each of the Guarantors, subject in each case to clauses (i) and (ii) of this Section 8(d). Any party entitled to contribution will, promptly after receipt of notice of commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party or parties under this Section 8, notify such party or parties from whom contribution may be sought, but the failure to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any obligation it or they may have under this Section 8 or otherwise.

#### **SECTION 9. RULE 144A**

Cinemark and the Guarantors hereby agree with each Holder, for so long as any Applicable Securities remain outstanding, to make available to any Holder or beneficial owner of Applicable Securities in connection with any sale thereof and any prospective purchaser of such Applicable Securities from such Holder or beneficial owner, the information required by Rule 144A(d)(4) under the Act in order to permit resales of such Applicable Securities pursuant to Rule 144A.

#### **SECTION 10. UNDERWRITTEN REGISTRATIONS**

No Holder may participate in any Underwritten Registration hereunder unless such Holder (a) agrees to sell such Holder's Applicable Securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (b) completes and executes all reasonable questionnaires, powers of attorney, indemnities, underwriting agreements, lock-up letters and other documents required under the terms of such underwriting arrangements.

#### **SECTION 11. SELECTION OF UNDERWRITERS**

The Holders of Applicable Securities covered by the Shelf Registration Statement who desire to do so may sell such Applicable Securities in an Underwritten Offering. In any such Underwritten Offering, the investment banker or investment bankers and manager or managers that will administer the offering will be selected by the Holders of a majority in aggregate

principal amount of the Applicable Securities included in such offering; *provided* that such investment bankers and managers must be reasonably satisfactory to Cinemark (it being understood that Barclays Capital Inc. is reasonably satisfactory); such investment bankers and manager or managers are referred to herein as the “underwriters”.

## SECTION 12. MISCELLANEOUS

(a) Remedies. Cinemark and the Guarantors agree that monetary damages (including the Additional Interest contemplated hereby) would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and hereby agree to waive the defense in any action for specific performance that a remedy at law would be adequate.

(b) No Inconsistent Agreements. Neither Cinemark nor any Guarantor will, on or after the date of this Agreement, enter into any agreement with respect to its securities that is inconsistent with the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. The rights granted to the Holders hereunder do not in any way conflict with, and are not inconsistent with, the rights granted to the holders of Cinemark’s securities under any agreement in effect on the date hereof.

(c) Adjustments Affecting the Securities. Neither Cinemark nor any Guarantor will take any action, or permit any change to occur, with respect to the Securities that would materially and adversely affect the ability of the Holders to consummate any Exchange Offer.

(d) Amendments and Waivers. The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given unless Cinemark has obtained the written consent of Holders of a majority of the outstanding principal amount of Applicable Securities. Notwithstanding the foregoing, a waiver or consent to departure from the provisions hereof that relates exclusively to the rights of Holders whose securities are being tendered pursuant to the Exchange Offer or registered pursuant to the Shelf Registration and that does not affect directly or indirectly the rights of other Holders whose securities are not being tendered pursuant to such Exchange Offer or registered pursuant to the Shelf Registration, may be given by the Holders of a majority of the outstanding principal amount of Applicable Securities being tendered or registered, as applicable.

(e) Notices. All notices and other communications provided for, or permitted hereunder, shall be made in writing by hand-delivery, first-class mail (registered or certified, return receipt requested), telex, telecopier, or air courier guaranteeing overnight delivery:

(i) if to a Holder, at the address set forth on the records of the Registrar under the Indenture, with a copy to the Registrar under the Indenture; and

(ii) if to Cinemark:

Cinemark USA, Inc.  
3900 Dallas Parkway

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Suite 500  
Plano, Texas 75093  
Phone No.: (972) 665-1000  
Telecopier No.: (972) 665-1004  
Attention: Michael Cavalier

with a copy to:

Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201  
Phone No.: (214) 969-2800  
Telecopier No.: (214) 969-4343  
Attention: Terry M. Schpok, P.C.

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if telecopied; and on the next Business Day, if timely delivered to an air courier guaranteeing overnight delivery.

Copies of all such notices, demands or other communications shall be concurrently delivered by the Person giving the same to the Trustee at the address specified in the Indenture.

(f) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, including without limitation and without the need for an express assignment, subsequent Holders of Applicable Securities; *provided, however*, that this Agreement shall not inure to the benefit of or be binding upon a successor or assign of a Holder unless and to the extent such successor or assign acquired Applicable Securities from such Holder.

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

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

(i) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(j) Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

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(k) Entire Agreement. This Agreement together with the other Transaction Documents (as defined in the Purchase Agreement) is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein with respect to the registration rights granted by Cinemark and the Guarantors with respect to the Applicable Securities. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

[Signatures on the following page]

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

CINEMARK USA, INC.  
SUNNYMEAD CINEMA CORP.  
CINEMARK PROPERTIES, INC.  
GREELEY HOLDINGS, INC.  
TRANS TEXAS CINEMA, INC.  
CINEMARK PARTNERS I, INC.  
MULTIPLEX SERVICES, INC.  
CNMK TEXAS PROPERTIES, LLC  
CINEMARK CONCESSIONS, LLC.  
CENTURY THEATRES, INC.  
MARIN THEATRE MANAGEMENT, LLC  
CENTURY THEATRES NG, LLC  
CINEARTS, LLC  
CINEARTS SACRAMENTO, LLC  
CORTE MADERA THEATRES, LLC  
NOVATO THEATRES, LLC  
SAN RAFAEL THEATRES, LLC  
NORTHBAY THEATRES, LLC  
CENTURY THEATRES SUMMIT SIERRA, LLC  
CENTURY THEATRES SEATTLE, LLC  
CNMK INVESTMENTS, INC.

By: /s/ Michael D. Cavalier  
Name: Michael D. Cavalier  
Title: Senior Vice President – General  
Counsel

[CUSA – Registration Rights Agreement]

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Accepted:

BARCLAYS CAPITAL INC.  
MORGAN STANLEY & CO. LLC  
DEUTSCHE BANK SECURITIES INC.  
WELLS FARGO SECURITIES, LLC  
NOMURA SECURITIES INTERNATIONAL, INC.

BY BARCLAYS CAPITAL INC.

By: /s/ Robert Chen  
*Authorized Representative*

[CUSA – Registration Rights Agreement]

**\$800,000,000**

**AMENDED AND RESTATED CREDIT AGREEMENT**

among

**CINEMARK HOLDINGS, INC.,  
as the Parent**

**CINEMARK USA, INC.,  
as the Borrower,**

**The Several Lenders  
from Time to Time Parties Hereto,**

**BARCLAYS BANK PLC  
as Lead Arranger,**

**BARCLAYS,  
DEUTSCHE BANK SECURITIES INC.,  
MORGAN STANLEY SENIOR FUNDING, INC.,  
and  
WELLS FARGO SECURITIES, LLC  
as Joint Bookrunners,**

**MORGAN STANLEY SENIOR FUNDING, INC.,  
as Syndication Agent,**

**DEUTSCHE BANK SECURITIES INC.,  
WELLS FARGO SECURITIES, LLC,  
and  
WEBSTER BANK, N.A.,  
as Co-Documentation Agents,**

and

**BARCLAYS BANK PLC,  
as Administrative Agent**

**Dated as of December 18, 2012**



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A Pricing Grid

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C Form of Closing Certificate  
D Form of Mortgage  
E Form of Assignment and Assumption  
F-1 Form of Legal Opinion of Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
F-2 Form of Legal Opinion of Local Counsel  
G-1 Form of Term Note  
G-2 Form of Revolving Credit Note  
H-1 Form of U.S. Tax Compliance Certificate  
H-2 Form of U.S. Tax Compliance Certificate  
H-3 Form of U.S. Tax Compliance Certificate  
H-4 Form of U.S. Tax Compliance Certificate  
I Form of Borrowing Notice  
J Form of Reaffirmation Agreement

AMENDED AND RESTATED CREDIT AGREEMENT, dated as of December 18, 2012, among CINEMARK HOLDINGS, INC., a Delaware corporation (together with any of its permitted successors and assigns, the "Parent"), CINEMARK USA, INC., a Texas corporation (together with any of its permitted successors and assigns, the "Borrower"), the several banks and other financial institutions or entities from time to time parties to this Agreement (the "Lenders") and BARCLAYS BANK PLC, as administrative agent (in such capacity, the "Administrative Agent").

W I T N E S S E T H:

WHEREAS, the Borrower entered into the existing Credit Agreement, dated as of October 5, 2006 (the "Existing Credit Agreement"), with the several lenders party thereto, Barclays Bank PLC, as administrative agent, and certain other parties;

WHEREAS, the Required Lenders under the Existing Credit Agreement along with the parties hereto have agreed to amend and restate the Existing Credit Agreement as provided in this Agreement, which Agreement shall become effective upon the satisfaction of the conditions set forth in Section 5.1;

WHEREAS, the Borrower has requested that the Lenders extend credit to the Borrower in the form of (i) Term Loans (as this and other capitalized terms used in these preliminary statements are defined in Section 1.1 below) in an initial aggregate amount of \$700,000,000 and (ii) a Revolving Credit Facility in an initial aggregate amount of \$100,000,000;

WHEREAS, the proceeds of the Term Loans made on the Restatement Closing Date, together with other funds, will be used to refinance certain existing indebtedness of the Borrower, for general corporate purposes, and to pay fees and expenses related to any of the foregoing (collectively, the "Transactions");

WHEREAS, the proceeds of the Revolving Credit Loans will be used for general corporate purposes; and

WHEREAS, the Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto hereby agree that on the Restatement Closing Date the Existing Credit Agreement shall be amended and restated in its entirety as follows:

SECTION 1. DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

“5.125% Senior Note Indenture”: the Indenture entered into by the Borrower and the subsidiary guarantors from time to time party thereto in connection with the issuance of the 5.125% Senior Notes, together with all instruments and other agreements entered into by the Borrower or any subsidiary guarantor party thereto in connection therewith, as the same may be amended, supplemented or otherwise modified from time to time or refinanced pursuant to Section 7.2(u).

“5.125% Senior Notes”: \$400,000,000 aggregate outstanding principal amount of the Borrower’s 5.125% Senior Notes due 2022, as the same may be amended, supplemented or otherwise modified from time to time or refinanced pursuant to Section 7.2(u).

“8.625% Senior Note Indenture”: the Indenture entered into by the Borrower and the subsidiary guarantors from time to time party thereto in connection with the issuance of the 8.625% Senior Notes, together with all instruments and other agreements entered into by the Borrower or any subsidiary guarantor party thereto in connection therewith, as the same may be amended, supplemented or otherwise modified from time to time or refinanced pursuant to Section 7.2(t).

“8.625% Senior Notes”: \$470,000,000 aggregate outstanding principal amount of the Borrower’s 8.625% Senior Notes due 2019, as the same may be amended, supplemented or otherwise modified from time to time or refinanced pursuant to Section 7.2(t).

“Acceptable Discount”: as defined in Section 2.25(c).

“Adjustment Date”: as defined in the Pricing Grid.

“Administrative Agent”: as defined in the preamble hereto.

“Affiliate”: as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the securities having ordinary voting power for the election of directors (or individuals performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Affiliate Transaction”: as defined in Section 7.10.

“Agents”: the collective reference to the Administrative Agent and any other agent identified on the cover page of this Agreement, including, for the avoidance of doubt, the Arranger and the Bookrunners.

“Aggregate Exposure”: with respect to any Lender at any time, an amount equal to the sum of (i) the aggregate then unpaid principal amount of such Lender’s Term Loans and (ii) the amount of such Lender’s Revolving Credit Commitment then in effect or, if the Revolving Credit Commitments have been terminated, the amount of such Lender’s Revolving Extensions of Credit then outstanding.

“Aggregate Exposure Percentage”: with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender’s Aggregate Exposure at such time to the sum of the Aggregate Exposures of all Lenders at such time.

“Aggregate Special Prepayment Face Amount Limit”: as defined in Section 2.25(a).

“Agreement”: this amended and restated Credit Agreement, as amended, supplemented or otherwise modified from time to time.

“Annualized Theatre”: for any period, any newly constructed theatre owned, operated or managed by the Borrower or any of its Restricted Subsidiaries which has completed at least one full quarter of operations as of the last day of such period, but less than four full quarters of operations as of the last day of such period, in each case as identified to the Administrative Agent.

“Applicable Amount”: as of any date of determination (the “Determination Date”), the Restatement Date Applicable Amount plus, without duplication, the amount (but in no event less than zero) equal to (a) the sum of (i) the aggregate amount of cash and the fair market value of non-cash items received by the Parent or the Borrower as common equity after the Restatement Closing Date and on or prior to such Determination Date, (ii) the amount of the net reduction after the Restatement Closing Date and on or prior to such Determination Date, in Investments held by the Parent, any Intermediate Holdco, the Borrower and its Class I Restricted Subsidiaries in Class II Restricted Subsidiaries, Unrestricted Subsidiaries and other entities that are not Class I Restricted Subsidiaries made after the Original Closing Date resulting from proceeds realized on the sale or other Disposition of such Investments, proceeds representing the return of capital, including redemptions, dividends and distributions, the amount of all guarantees released, all payments of principal of, or interest on, Indebtedness and other obligations that constitute such Investments, and the fair market value (not in excess of the amount previously subtracted under clause (b)(iii) below) of any Unrestricted Subsidiary redesignated as a Class I Restricted Subsidiary, (iii) Consolidated EBITDA minus 1.75 times Consolidated Interest Expense for the fiscal quarter in which the Restatement Closing Date occurs and for each full fiscal quarter completed since the Restatement Closing Date and prior to the Determination Date for which financial statements have been delivered pursuant to Section 6.1(a) or 6.1(b), as applicable, (iv) to the extent deducted in computing the Consolidated EBITDA specified in clause (iii) above and not included in clause (ii) above, any net gains on sales of assets outside the ordinary course of business (including, without limitation, any such gains that are extraordinary gains) and (v) (A) in the case of expenditures made pursuant to Sections 7.7(c) and 7.8(h) and the designation on or after the Restatement Closing Date of any Class I Restricted Subsidiaries of the Parent (other than CFC Holdcos) as Unrestricted Subsidiaries, \$275,000,000 in the aggregate, and (B) in the case of expenditures made pursuant to Section 7.9(a)(ii), \$200,000,000 in the aggregate, minus (b) the sum of (i) the portion of such sum expended on and after the Restatement Closing Date and on or prior to such Determination Date pursuant to Sections 7.6(i), 7.7(c), 7.8(h) and 7.9(a)(ii) and (ii) the fair market value (as of the date of such designation) of any Class I Restricted Subsidiaries of the Parent designated as Unrestricted Subsidiaries on or after the Restatement Closing Date (the fair market value of any CFC Holdco being deemed for this purpose to be the value of the cash and Cash Equivalents held directly by such CFC Holdco at the time of such designation without taking into account the value of any other assets or properties of such CFC Holdco). Expenditures made pursuant to Sections 7.7(c), 7.8(h) and 7.9(a)(ii) and in connection with the designation of a Class I Restricted Subsidiary as an Unrestricted Subsidiary shall be deemed to utilize the amounts in clause (a)(v)(A) above or (a)(v)(B) above, as applicable, prior to utilization of the amounts in clauses (a)(i) through (a)(iv) above.



“Applicable Consolidated EBITDA Amount”: on any date of determination, an amount equal to the product of (x) Consolidated EBITDA for the Fiscal Year ended immediately prior to such date of determination for which financial statements have been delivered pursuant to Section 6.1(a) multiplied by (y) the Capital Expenditure Percentage for the Fiscal Year in which such determination date occurs.

“Applicable Margin”: for each Type of Loan under each Facility, the rate per annum set forth opposite such Facility under the relevant column heading below:

	Base Rate Loans	Eurodollar Loans
Term Loan Facility	2.00%	3.00%
Revolving Credit Facility	1.50%	2.50%

provided that, from and after the first Adjustment Date occurring after the completion of two full fiscal quarters of the Borrower after the Restatement Closing Date, the Applicable Margin with respect to the Revolving Credit Loans will be determined pursuant to the Pricing Grid.

“Application”: an application, in such form as the relevant Issuing Lender may specify from time to time, requesting such Issuing Lender to issue a Letter of Credit.

“Arranger”: as defined in the preamble hereto.

“Asset Sale”: any Disposition of Property or series of related Dispositions of Property (including any such Dispositions pursuant to Section 7.5(l)(ii) and (o), but excluding any such Dispositions permitted by Section 7.5(a) through (k), (l)(i), (m) and (n)) which yields gross proceeds to the Parent, the Borrower or any of its Class I Restricted Subsidiaries (valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value as reasonably determined by the board of directors of the Borrower in the case of other non-cash proceeds) in excess of \$10,000,000.

“Assignee”: as defined in Section 10.6(c).

“Assignment and Assumption”: an Assignment and Assumption, substantially in the form of Exhibit E.

“Assignor”: as defined in Section 10.6(c).

“Assumed Loan Amount”: at any time, an amount equal to the sum of (i) the aggregate unpaid principal amount of the Term Loans then outstanding plus (ii) the Total Revolving Credit Commitments then in effect or, if the Revolving Credit Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding.

“Available Revolving Credit Commitment”: with respect to any Revolving Credit Lender at any time, an amount equal to the excess, if any, of (a) such Lender’s Revolving Credit Commitment then in effect over (b) such Lender’s Revolving Extensions of Credit then outstanding.

“Bankruptcy Event”: with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Barclays Entity”: any of Barclays Bank PLC or any of its Affiliates.

“Base Rate”: for any day, a rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus, in the case of this clause (b), 1/2 of 1% and (c) the Eurodollar Rate on such day (or, if such day is not a Business Day, the next preceding Business Day) for a deposit in Dollars with a maturity of one month plus, in the case of this clause (c), 1%. For purposes hereof: “Prime Rate” shall mean the rate of interest per annum publicly announced from time to time by Barclays Bank PLC as its prime rate in effect at its principal office in New York City (the Prime Rate not being intended to be the lowest rate of interest charged by Barclays Bank PLC in connection with extensions of credit to debtors). Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Eurodollar Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate, the Federal Funds Effective Rate or the Eurodollar Rate, respectively.

“Base Rate Loans”: Loans for which the applicable rate of interest is based upon the Base Rate.

“Benefitted Lender”: as defined in Section 10.7(a).

“Board”: the Board of Governors of the Federal Reserve System of the United States (or any successor).

“Bookrunners”: as defined in the preamble hereto.

“Borrower”: as defined in the preamble hereto.

“Borrowing Date”: any Business Day specified by the Borrower as a date on which the Borrower requests the relevant Lenders to make Loans hereunder.

“Borrowing Notice”: with respect to any request for borrowing of Loans hereunder, a notice from the Borrower, substantially in the form of, and containing the information prescribed by, Exhibit I, delivered to the Administrative Agent.

“Brazilco”: Cinemark Brasil S.A.

“Business Day”: (a) for all purposes other than as covered by clause (b) below, a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, Eurodollar Loans, any day which is a Business Day described in clause (a) and which is also a day for trading by and between banks in Dollar deposits in the interbank eurodollar market.

“Capital Expenditure Percentage”: 40% during each Fiscal Year.

“Capital Expenditures”: for any period, with respect to any Person, the aggregate of all cash expenditures by such Person for the acquisition or leasing (pursuant to a capital lease (other than an EITF 97-10 Capital Lease)) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) which are required to be capitalized under GAAP on a balance sheet of such Person, provided that, “Capital Expenditures” shall exclude (a) the portion of the purchase price paid in connection with a Permitted Acquisition which is required to be capitalized under GAAP on a balance sheet of such Person and (b) any cash expenditures incurred by such Person under any Digital Cinema Equipment Lease with DCIP that is required to be classified under GAAP on a balance sheet of such Person as a capital lease; provided further that, for the purposes of Section 7.7, “Capital Expenditures” shall exclude expenditures associated with replacements, capitalized repairs and improvements. For the purposes of this definition, the purchase price of equipment which is purchased by a Person contemporaneously with the trade in of existing equipment owned by such Person or with insurance proceeds shall be included in the determination of Capital Expenditures only to the extent of cash paid in excess of the credit granted with respect to the equipment which is being traded in or the amount of such insurance proceeds, as the case may be.

“Capital Lease Obligations”: with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP; and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

“Capital Stock”: any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing, but excluding any debt securities convertible into any of the foregoing.

“Cash Equivalents”: (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of six months or less from the date of acquisition and demand deposits, in each case issued by (A) (i) any Lender, (ii) any commercial bank organized under the laws of the United States of America or any state thereof having combined capital and surplus of not less than \$100,000,000, or (iii) overseas branches of commercial banks incorporated under the laws of the United States of America, any state thereof, the District of Columbia, Canada or any province or territory thereof having combined capital and surplus and undivided profits in excess of \$100,000,000 or any commercial bank or similar entity organized under the laws of any other country that is a member of the Organization of Economic Cooperation and Development (“OECD”) and has total assets in excess of \$100,000,000 or (B) with respect to any Foreign Subsidiary, (i) any entity described in the foregoing clause (A) or (ii) any commercial bank or similar entity organized under the laws of the jurisdiction in which such Foreign Subsidiary maintains an office or engages in business provided that, in the case of deposits under this clause (b)(B)(ii), such deposits are made in the ordinary course of business for cash management purposes; (c) commercial paper of an issuer rated at least A-2 by S&P or P-2 by Moody’s, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within nine months from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than 30 days with respect to securities issued or fully guaranteed or insured by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, province, commonwealth or territory of the United States or Canada, by any political subdivision or taxing authority of any such state, province, commonwealth or territory or by any foreign government, the securities of which state, province, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody’s; (f) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition; (g) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition; and (h) with respect to any Foreign Subsidiary having its principal operations in Mexico only, (i) *Certificados de la Tesorería de la Federación (Cetes)*, *Bonos de Desarrollo del Gobierno Federal (Bondes)* or *Bonos Adjustables del Gobierno Federal (Adjustabonos)*, in each case, issued by the Mexican government, and (ii) any other instruments issued or guaranteed by Mexico and denominated and payable in Pesos; provided, that, in each case, such investments under this clause (h) are made in the ordinary course of business for cash management purposes.

“CFC Class II Holdco”: any CFC Holdco substantially all of whose assets consist of Capital Stock of one or more Class II Restricted Subsidiaries, cash and Cash Equivalents.

“CFC Holdco”: any Subsidiary, substantially all of whose assets consist of Capital Stock of one or more Foreign Subsidiaries, cash and Cash Equivalents, that is designated by the Borrower as a CFC Holdco by notice to the Administrative Agent.

“Change of Control”: the occurrence of any of the following events:

(a) (i) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), excluding the Permitted Investors, shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of more than 35% of the voting power of the outstanding common stock of the Parent or (ii) a majority of the members of the board of directors of the Parent shall not be Continuing Directors;

(b) (i) at any time prior to the occurrence of a Specified Reorganization, the Parent shall cease to own and control, of record and beneficially, directly, 100% of each class of outstanding Capital Stock of the Borrower free and clear of all Liens and (ii) at any time after the occurrence of a Specified Reorganization, the Parent shall cease to own and control, directly or indirectly through one or more Intermediate Holdcos, 100% of each class of outstanding Capital Stock of the Borrower free and clear of all Liens (in each case, except Liens permitted under Section 7.3(a) or (h) hereof); or

(c) a Specified Change of Control.

“Class I Restricted Subsidiary”: any Restricted Subsidiary which is not a Class II Restricted Subsidiary.

“Class II Restricted Subsidiaries”: (a) the Subsidiaries listed as “Class II Restricted Subsidiaries” on Schedule 4.15(a) and any Subsidiary of a Class II Restricted Subsidiary other than an Unrestricted Subsidiary and (b) any Unrestricted Subsidiary designated as a Class II Restricted Subsidiary in accordance with Section 6.11.

“Code”: the Internal Revenue Code of 1986, as amended from time to time.

“Co-Documentation Agents”: as defined in the preamble hereto.

“Collateral”: all Property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

“Commitment”: with respect to any Lender, each of the Term Loan Commitment and the Revolving Credit Commitment of such Lender.

“Commitment Fee”: as defined in Section 2.7.

“Commitment Fee Rate”: 0.375% per annum; provided that, from and after the first Adjustment Date occurring after the completion of two full fiscal quarters of the Borrower after the Restatement Closing Date, the Commitment Fee Rate will be determined pursuant to the Pricing Grid.

“Commonly Controlled Entity”: an entity, whether or not incorporated, that is under common control with the Borrower within the meaning of Section 4001 of ERISA or is part of a group that includes the Borrower and that is treated as a single employer under Section 414 of the Code.

“Compliance Certificate”: a certificate duly executed by a Responsible Officer, substantially in the form of Exhibit B.

“Confidential Information Memorandum”: the Confidential Information Memorandum dated December 2012 and furnished to the initial Lenders in connection with the syndication of the Facilities.

“Consolidated EBITDA”: for any period, without duplication, Consolidated Net Income for such period (excluding from Annualized Theatres) plus, to the extent reflected as a charge in the statement of such Consolidated Net Income for such period, the sum of (a) expenses for taxes based on income or capital, including franchise and similar taxes, (b) Consolidated Interest Expense, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness, (c) depreciation and amortization expense, (d) amortization, impairment, write-down or write-off of intangibles (including, but not limited to, goodwill) and organization costs, (e) any extraordinary, unusual or non-recurring expenses (including, without limitation, expenses for severance, non-recurring retention bonuses, payments to employees of acquired entities under stock option plans or similar incentive plans such as long term incentive plans, relocation and restructuring costs related to acquisitions) or losses (including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, (x) net losses on sales of assets outside of the ordinary course of business and (y) losses or costs arising from lease dispositions), (f) any call premium (or original issue discount) expenses associated with the repurchase or repayment of Indebtedness, (g) to the extent actually reimbursed by a third party (other than the Parent or any of its Subsidiaries) and not otherwise added back in the computation of Consolidated Net Income, expenses incurred for payments under indemnification provisions in any agreement for an acquisition or an Asset Sale, (h) any other non-cash charges (including foreign exchange losses not included in operating income but deducted from earnings in determining Consolidated Net Income), (i) any reasonable expense related to any equity offering, Permitted Acquisition, Investment, recapitalization, Asset Sale or Indebtedness permitted to be incurred under this Agreement (in each case, whether or not successful), (j) letter of credit fees and annual agency fees paid to the Administrative Agent, (k) to the extent covered by insurance under which the insurer has been properly notified and has not denied or contested coverage, expenses with respect to liability or casualty events or business interruption and (l) costs incurred in connection with the closing or Disposition of any theatre or screen within a theatre, and minus, to the extent included in the statement of such Consolidated Net Income for such period, the sum of, (a) any extraordinary, unusual or non-recurring income or gains (including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, net gains on sales of assets outside of the ordinary course of business) and (b) any other non-cash income or gains (including foreign exchange gains not included in operating income but otherwise included in earnings in determining Consolidated Net Income) (other than the amortization of prepaid cash income), all as determined on a consolidated basis, and plus, except to the extent already included in the computation of Consolidated Net Income, any cash dividend paid on the Capital Stock of NCM Holdings or National CineMedia, LLC (other than any NCM Recapitalization Dividend) during such period, and plus any Pro Forma Cost Savings for such period minus any Pro Forma Cost Savings added to Consolidated EBITDA during any prior period to the extent that such Pro Forma Cost Savings were not achieved within 18 months of the closing date of any Permitted Acquisition; provided that for purposes of calculating Consolidated EBITDA of the Borrower and its Restricted Subsidiaries for any period:

(i) the Consolidated EBITDA of any Person or theatre or theatres acquired by the Borrower or its Restricted Subsidiaries or of any Annualized Theatres during such period shall be included on a pro forma basis for such period (assuming the consummation of such acquisition or the operations of such Annualized Theatre and, in any such case, the incurrence or assumption of any Indebtedness in connection therewith had occurred on the first day of such period and without giving effect to clause (a) of the proviso set forth in the definition of Consolidated Net Income in this Section 1.1) if, in the case of an acquisition of a Person, the consolidated balance sheet of such acquired Person and its consolidated Subsidiaries as at the end of the period preceding the acquisition of such Person and the related consolidated statements of income and stockholders' equity and of cash flows for the period in respect of which Consolidated EBITDA is to be calculated (x) have been previously provided to the Administrative Agent and (y) either (1) have been reported on without a qualification arising out of the scope of the audit by independent certified public accountants of nationally recognized standing or (2) have been found reasonably acceptable by the Administrative Agent;

(ii) the Consolidated EBITDA of any Person or theatre or theatres Disposed of by the Borrower or its Restricted Subsidiaries during such period shall be excluded for such period (assuming the consummation of such Disposition and the repayment of any Indebtedness in connection therewith had occurred on the first day of such period); and

(iii) any redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary and any designation of a Restricted Subsidiary as an Unrestricted Subsidiary which occurred during such period shall be deemed to have occurred on the first day of such period.

"Consolidated Interest Expense": for any period, total cash interest expense (including that attributable to Capital Lease Obligations) of the Borrower and its Restricted Subsidiaries for such period with respect to all outstanding Indebtedness of the Borrower and its Restricted Subsidiaries (including, without limitation, all commissions, discounts and other fees and charges owed by the Borrower with respect to letters of credit and bankers' acceptance financing and net costs of the Borrower under Hedge Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP) other than intercompany Indebtedness owed to the Parent, any Intermediate Holdco, the Borrower or any Restricted Subsidiary, except to the extent paid in cash by the Borrower or any Restricted Subsidiary to the Parent or any Intermediate Holdco.

"Consolidated Net Income": for any period, the consolidated net income (or loss) of the Borrower and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP; provided, that in calculating Consolidated Net Income of the Borrower and its Restricted Subsidiaries for any period, there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Restricted Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any of its Restricted Subsidiaries, (b) the income (or deficit) of any Person (other than a Restricted Subsidiary of the

Borrower) in which the Borrower or any of its Restricted Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Borrower or such Restricted Subsidiary in the form of dividends or similar distributions or payment of principal or interest of intercompany Indebtedness, (c) the undistributed earnings of any Restricted Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary is not at the time permitted by the terms of any Contractual Obligation (other than under any Loan Document) or Requirement of Law applicable to such Restricted Subsidiary and (d) the cumulative effect of a change in accounting principles during such period to the extent included in Consolidated Net Income. There shall be excluded from Consolidated Net Income for any period the effects of adjustments due to the application of the acquisition method of accounting to property and equipment, software and other intangible assets required or permitted by GAAP and related authoritative pronouncements, as a result of any acquisition.

“Consolidated Net Senior Secured Leverage Ratio”: as of the last day of any period of four consecutive fiscal quarters of the Borrower, the ratio of (a) Consolidated Senior Secured Debt on such day less the aggregate amount of cash and Cash Equivalents owned by the Borrower or any Restricted Subsidiary on such day (in each case, free and clear of all Liens (other than Liens permitted under Sections 7.3(a), (h), (j) or (n))) to (b) Consolidated EBITDA for such period.

“Consolidated Net Tangible Assets”: means, as of any date of determination, the consolidated total assets of the Borrower and its consolidated Restricted Subsidiaries determined in accordance with GAAP as of the end of the Borrower’s most recent fiscal quarter by reference to the then most recent date for which the Borrower has delivered (or was required to deliver, if such delivery has not been made) its financial statements under Section 6.1 or, if the Borrower has not yet been required to deliver financial statements under Section 6.1, determined as of September 30, 2012, less all goodwill, trade names, trademarks, patents, organization expense, unamortized debt discount and expense and other similar intangibles properly classified as intangibles in accordance with GAAP.

“Consolidated Senior Secured Debt”: all Consolidated Total Debt that is secured by a Lien on any assets of the Parent, the Borrower or any of its Restricted Subsidiaries.

“Consolidated Total Debt”: at any date, the aggregate principal amount of all Funded Debt of the Borrower and its Restricted Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP.

“Consolidated Total Leverage Ratio”: as of the last day of any period of four consecutive fiscal quarters of the Borrower, the ratio of (a) Consolidated Total Debt on such day to (b) Consolidated EBITDA of the Borrower and its Restricted Subsidiaries for such period.

“Continuing Directors”: with respect to any period of two consecutive years, individuals who at the beginning of such period constituted the board of directors of the Parent (together with any new directors whose election by such board or whose nomination for election by the stockholders of the Parent was approved by a vote of at least a majority of the directors of the Parent then still in office who were either directors at the beginning of such period or whose election or nomination was previously so approved or is a designee of the Permitted Investors or was nominated or elected by the Permitted Investors or any of their designees).



“Contractual Obligation”: as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

“Credit Party”: the Administrative Agent, the Issuing Lender or any other Lender.

“DCIP”: Digital Cinema Implementation Partners LLC, a Delaware limited liability company, its Subsidiaries, and any other Person with a primary business purpose of facilitating the implementation of digital cinemas in theatres and agreements and arrangements with respect to the financing of digital cinema and any Person that is a direct or indirect parent entity thereof and has no material independent operations.

“Default”: any of the events specified in Section 8.1, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Defaulting Lender”: any Lender that has (a) failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) notified the Borrower or any Credit Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) failed, within three Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party’s receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) become the subject of a Bankruptcy Event.

“Derivatives Counterparty”: as defined in Section 7.6.

“Digital Cinema Equipment Lease”: any lease arrangement pursuant to which the Borrower or any of its Subsidiaries is granted the right to use digital cinema equipment.

“Digital Projector Financing”: any financing arrangement in respect of digital projector equipment for use in the ordinary course of business in theatres owned, leased or operated by the Borrower and its Subsidiaries. For the avoidance of doubt, Digital Projector Financing does not include any Digital Cinema Equipment Lease.

“Discount Range”: as defined in Section 2.25(a).

“Disposition”: with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof (but excluding the granting of a Lien); and the terms “Dispose” and “Disposed of” shall have correlative meanings.

“Disqualified Stock”: any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable), or upon the happening of any event, (1) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, (2) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock which is convertible or exchangeable solely at the option of the Borrower or a Restricted Subsidiary), or (3) is redeemable at the option of the holder of the Capital Stock, in whole or in part, in each case on or prior to the date which is 90 days after the seventh anniversary of the Restatement Closing Date. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the Borrower to repurchase or redeem such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock (and all such securities into which it is convertible or for which it is exchangeable) provide that the Borrower may not repurchase or redeem any such Capital Stock (and all such securities into which it is convertible or for which it is exchangeable) pursuant to such provisions unless such repurchase or redemption complies with Section 7 herein.

“Dollars” and “\$”: lawful currency of the United States of America.

“Domestic Subsidiary”: any Subsidiary of the Borrower organized under the laws of any jurisdiction within the United States of America.

“EITF 97-10”: Emerging Issues Task Force Regulation 97-10 and any similar pronouncement modifying GAAP with respect to the issues addressed in Regulation 97-10, including Accounting Standards Codification 840 (paragraph 40-05).

“EITF 97-10 Capital Leases”: any lease that is classified as a “capital lease” under GAAP, but which would not be so classified if not for the application of EITF 97-10 and similar principles.

“Environmental Laws”: any and all laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or other legally enforceable requirements (including, without limitation, common law) of any international authority, foreign government, the United States, or any state, local, municipal or other governmental authority, regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health.

“Environmental Permits”: any and all permits, licenses, approvals, registrations, notifications, exemptions and other authorizations required under any Environmental Law.

“ERISA”: the Employee Retirement Income Security Act of 1974, as amended from time to time.

“Eurocurrency Reserve Requirements”: for any day, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including, without limitation, basic, supplemental, marginal and emergency reserves) under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board) maintained by a member bank of the Federal Reserve System.

“Eurodollar Base Rate”: with respect to each day during each Interest Period pertaining to a Eurodollar Loan, the rate per annum determined on the basis of the rate for deposits in Dollars for a period equal to such Interest Period commencing on the first day of such Interest Period appearing on the Reuters Screen LIBOR01 Page as of 11:00 A.M., London time, two Business Days prior to the beginning of such Interest Period. In the event that such rate does not appear on such page (or otherwise on such screen), the “Eurodollar Base Rate” for purposes of this definition shall be determined by reference to such other comparable publicly available service for displaying eurodollar rates as may be reasonably selected by the Administrative Agent or, in the absence of such availability, by reference to the rate at which dollar deposits of \$5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 A.M., London time, two Business Days prior to the commencement of such Interest Period.

“Eurodollar Loans”: Loans for which the applicable rate of interest is based upon the Eurodollar Rate.

“Eurodollar Rate”: with respect to each day during each Interest Period, a rate per annum determined for such day in accordance with the following formula (rounded upward to the nearest 1/100<sup>th</sup> of 1%):

$$\frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurocurrency Reserve Requirements}}$$

“Eurodollar Tranche”: the collective reference to Eurodollar Loans under a particular Facility the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

“Event of Default”: any of the events specified in Section 8.1, provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Exchange Act”: the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder, in each case as amended from time to time.

“Excluded Foreign Subsidiaries”: any Foreign Subsidiary in respect of which either (a) the pledge of all of the Capital Stock of such Subsidiary as Collateral or (b) the guaranteeing by such Subsidiary of the Obligations, would, in the good faith judgment of the Borrower, result in adverse tax consequences to the Borrower.

“Existing Credit Agreement”: the Credit Agreement, dated as of October 5, 2006, among the Borrower, the several lenders parties thereto and Barclays Bank PLC, as administrative agent, as amended and otherwise modified prior to the date hereof.

“Existing Letters of Credit”: the Letters of Credit listed on Schedule 1.1A.

“Existing Term Loans”: “Term Loans” outstanding under the Existing Credit Agreement immediately prior to the Restatement Closing Date.

“Facility”: each of (a) the Term Loan Commitments and the Term Loans made thereunder (the “Term Loan Facility”) and (b) the Revolving Credit Commitments and the extensions of credit made thereunder (the “Revolving Credit Facility”).

“FATCA”: Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended version that is substantively comparable) and any current or future regulations or official interpretations thereof, and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Effective Rate”: for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

“Fiscal Year”: the fiscal year of the Borrower.

“Fixed Discount”: as defined in Section 2.25(a).

“Foreign Subsidiary”: any Subsidiary of the Borrower that is not a Domestic Subsidiary.

“Funded Debt”: with respect to any Person, without duplication, all Indebtedness of such Person of the types described in clauses (a) through (e) of the definition of “Indebtedness” in this Section, excluding (i) obligations arising under any EITF 97-10 Capital Leases and obligations of the types described in Section 7.2(c)(ii), (ii) any intercompany Indebtedness owed to the Parent, any Intermediate Holdco, the Borrower or a Guarantor, (iii) Capital Lease Obligations and obligations permitted under Section 7.2(c)(v) outstanding on the relevant date of determination in an aggregate amount (excluding amounts covered by other clauses of this definition) not to exceed \$300,000,000, (iv) Capital Lease Obligations acquired or assumed by a Loan Party in connection with the Rave Acquisition, provided that such obligations were not created in contemplation of the Rave Acquisition and (v) any obligations under any Digital Cinema Equipment Lease with DCIP.

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“Funding Office”: the office specified from time to time by the Administrative Agent as its funding office by notice to the Borrower and the Lenders.

“GAAP”: generally accepted accounting principles in the United States of America as in effect from time to time, subject to Section 10.16.

“Governmental Authority”: any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Guarantee and Collateral Agreement”: the Guarantee and Collateral Agreement, dated as of the Original Closing Date, executed and delivered by the Parent, the Borrower and each Subsidiary Guarantor, substantially in the form of Exhibit A, as the same may be amended, supplemented or otherwise modified from time to time.

“Guarantee Obligation”: as to any Person (the “guaranteeing person”), any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit), if to induce the creation of such obligation of such other Person the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

“Guarantors”: the collective reference to the Parent, any Intermediate Holdcos and the Subsidiary Guarantors.

“Hedge Agreements”: all interest rate or currency swaps, caps or collar agreements, foreign exchange agreements, commodity contracts or similar arrangements entered into by the Borrower or its Restricted Subsidiaries providing for protection against fluctuations in or to reduce overall costs with respect to interest rates, currency exchange rates, commodity prices or the exchange of nominal interest obligations, either generally or under specific contingencies. For avoidance of doubt, Hedge Agreements shall include any interest rate swap or similar agreement that provides for the payment by the Borrower or any of its Subsidiaries of amounts based upon a floating rate in exchange for receipt by the Borrower or such Subsidiary of amounts based upon a fixed rate.

“Indebtedness”: of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of Property or services (other than (i) trade payables incurred in the ordinary course of such Person’s business and (ii) any earn-out obligation or post-closing payment adjustments until such obligation or adjustment becomes a liability on the balance sheet of such Person in accordance with GAAP), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property, provided that, in such event, the amount of such Indebtedness shall be deemed to be the lesser of the value of the Property covered by such agreement and the aggregate principal amount of such Indebtedness), (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under acceptance, letter of credit or similar facilities, (g) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value (whether on the scheduled date thereof or any earlier required date) any Capital Stock of such Person on or prior to the date which is 90 days after the seventh anniversary of the Restatement Closing Date (other than for consideration consisting solely of common stock of the Parent), (h) all Guarantee Obligations of such Person (other than Guarantee Obligations arising out of Digital Cinema Equipment Leases with DCIP) in respect of obligations of the kind referred to in clauses (a) through (g) above, (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on Property owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation to the extent of the value of the Property subject to such Lien and (j) for the purposes of Section 8.1(e) only, all obligations of such Person in respect of Hedge Agreements.

“Indemnified Liabilities”: as defined in Section 10.5.

“Indemnitee”: as defined in Section 10.5.

“Insolvency”: with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

“Insolvent”: pertaining to a condition of Insolvency.

“Intellectual Property”: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Interest Payment Date”: (a) as to any Base Rate Loan, the last day of each March, June, September and December to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurodollar Loan having an Interest Period of three months or shorter, the last day of such Interest Period, (c) as to any Eurodollar Loan having an Interest Period longer than three months, each day that is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period and (d) as to any Loan (other than any Revolving Credit Loan that is a Base Rate Loan), the date of any repayment or prepayment made in respect thereof.

“Interest Period”: as to any Eurodollar Loan, (a) initially, the period commencing on the Borrowing Date or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one, two, three or six or (with the consent of all Lenders under the relevant Facility, as determined by such Lenders in their sole discretion) nine or twelve months thereafter, as selected by the Borrower in its Borrowing Notice or notice of conversion, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one, two, three or six or (with the consent of all Lenders under the relevant Facility, as determined by such Lenders in their sole discretion) nine or twelve months thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent not less than three Business Days prior to the last day of the then current Interest Period with respect thereto; provided that, all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period that would otherwise extend beyond the Revolving Credit Termination Date or beyond the date final payment is due on the Term Loans shall end on the Revolving Credit Termination Date or such due date, as applicable; and

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period.

“Investments”: as defined in Section 7.8.

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“Intermediate Holdco”: as defined in the definition of “Specified Reorganization”.

“Issuing Lender”: any Revolving Credit Lender from time to time designated by the Borrower as an Issuing Lender with the consent of such Revolving Credit Lender and notice to the Administrative Agent.

“L/C Commitment”: \$35,000,000; provided, that with the consent of the relevant Issuing Lender and the consent of the Administrative Agent (such consent not to be unreasonably withheld), the L/C Commitment may be increased by up to \$25,000,000 if it is necessary to support, with a Letter of Credit issued hereunder, the obligations of the borrower under the Peso Subfacility or the Third-Party Peso Loans, as the case may be.

“L/C Fee Payment Date”: the last day of each March, June, September and December and the last day of the Revolving Credit Commitment Period.

“L/C Exposure”: at any time, the total L/C Obligations. The L/C Exposure of any Revolving Credit Lender at any time shall be its Revolving Credit Percentage of the total L/C Exposure at such time.

“L/C Obligations”: at any time, an amount equal to the sum of (a) the aggregate then undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate amount of drawings under Letters of Credit that have not then been reimbursed pursuant to Section 3.5.

“L/C Participants”: with respect to any Letter of Credit, the collective reference to all the Revolving Credit Lenders other than the Issuing Lender that issued such Letter of Credit.

“Lender Parent”: with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a Subsidiary.

“Lenders”: as defined in the preamble hereto.

“Letters of Credit”: as defined in Section 3.1(a).

“Lien”: any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

“Loan”: any loan made by any Lender pursuant to this Agreement.

“Loan Documents”: this Agreement, the Security Documents, the Applications, the Notes and any amendment, waiver, supplement or other modification to any of the foregoing.



“Loan Parties”: the Parent, any Intermediate Holdcos, the Borrower and each Restricted Subsidiary of the Borrower that is a party to a Loan Document.

“Majority Facility Lenders”: with respect to any Facility, the holders of more than 50% of (a) in the case of the Term Loan Facility, the aggregate unpaid principal amount of the Term Loans or (b) in the case of the Revolving Credit Facility, prior to any termination of the Revolving Credit Commitments, the Total Revolving Credit Commitments (or, if the Revolving Credit Commitments are no longer in effect, the Total Revolving Extensions of Credit then outstanding).

“Majority Revolving Credit Facility Lenders”: the Majority Facility Lenders in respect of the Revolving Credit Facility.

“Material Adverse Effect”: a material adverse effect on (a) the business, assets, property, operations, condition, financial condition or prospects of the Borrower and its Subsidiaries taken as a whole or (b) the validity or enforceability of this Agreement or any of the other Loan Documents or the material rights or remedies of the Agents or the Lenders hereunder or thereunder.

“Material Environmental Amount”: an amount or amounts payable by the Borrower and/or any of its Class I Restricted Subsidiaries, in the aggregate in excess of \$5,000,000, for: costs to bring an environmental condition into compliance with any Environmental Laws; costs of any investigation, and any remediation, of any Material of Environmental Concern; and compensatory damages (including, without limitation damages to natural resources), punitive damages, fines, and penalties pursuant to any Environmental Law.

“Materials of Environmental Concern”: any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, polychlorinated biphenyls, urea-formaldehyde insulation, asbestos, pollutants, contaminants, radioactivity, and any other substances, whether or not any such substance is defined as hazardous or toxic under any Environmental Law, that is regulated pursuant to or could give rise to liability under any Environmental Law.

“Mitchell Family”: (a) Lee Roy Mitchell or Tandy Mitchell, or any descendent of Lee Roy Mitchell or the spouse of such descendent, the estate of Lee Roy Mitchell, Tandy Mitchell, any descendent of Lee Roy Mitchell or the spouse of such descendent (each, a “Mitchell”), (b) any trust or other arrangement for the benefit of a Mitchell, any trust established by a Mitchell or any trustee, custodian, fiduciary or foundation which will hold the common stock of the Parent for charitable purposes or for the benefit of any Mitchell and (c) any Person at least 80% beneficially owned and controlled by one or more Mitchells.

“Moody’s”: Moody’s Investor Services, Inc.

“Mortgage Amendments”: as defined in Section 4.19(b).

“Mortgaged Properties”: (a) the real property and leasehold interests listed on Schedule 1.1B, as to which the Administrative Agent for the benefit of the Secured Parties has been granted a Lien pursuant to one or more Mortgages prior to the Restatement Closing Date and (b) any real property or leasehold interest acquired or leased after the Restatement Closing Date by any Loan Party which is required to be subjected to a Mortgage in favor of the Administrative Agent pursuant to Section 6.9(b).

“Mortgages”: each of the mortgages and deeds of trust made by any Loan Party in favor of, or for the benefit of, the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit D (with such changes thereto as shall be advisable under the law of the jurisdiction in which such mortgage or deed of trust is to be recorded), in each case, as the same may be amended, supplemented or otherwise modified from time to time.

“Multiemployer Plan”: a Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“National CineMedia, LLC”: National CineMedia, LLC, a Delaware limited liability company, together with any of its permitted successors and assigns.

“NCM Holdings”: a Delaware entity to be formed that will be the holding company for National CineMedia, LLC, together with any of its permitted successors and assigns.

“NCM Recapitalization Dividend”: any dividend paid to the Borrower or any of its Restricted Subsidiaries out of the net proceeds of Indebtedness incurred in connection with the recapitalization of NCM Holdings or National CineMedia, LLC.

“Net Cash Proceeds”: (a) in connection with any Asset Sale or Recovery Event, the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received), net of attorneys’ fees, accountants’ fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness existing prior to such transaction secured by a Lien permitted hereunder on any asset which is the subject of such Asset Sale or Recovery Event (other than any Lien pursuant to a Security Document), all distributions and other payments required to be made pursuant to partnership agreements, limited liability company organizational documents, joint venture agreements or similar agreements to minority interest holders in Restricted Subsidiaries as a result of such Asset Sale or Recovery Event, and other arm’s length costs, fees and expenses actually incurred in connection therewith and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements) provided that, such Net Cash Proceeds shall not include any amounts reserved for purchase price adjustments and post-closing liabilities in connection with any Asset Sale until such amounts have been released or are no longer reserved and (b) in connection with (i) any Permitted Equity Issuance or the sale of the Capital Stock of NCM Holdings or National CineMedia, LLC, (ii) the payment of any NCM Recapitalization Dividend or (iii) any incurrence of indebtedness, the cash proceeds received from such sale, payment or incurrence, net of attorneys’ fees, investment banking fees, accountants’ fees, underwriting discounts and commissions and other arm’s-length costs, fees and expenses actually incurred in connection therewith and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements).

“Non-Excluded Taxes”: as defined in Section 2.18(a).

“Non-Recourse Debt”: Indebtedness:

(a) with respect to any Unrestricted Subsidiary and any Class II Restricted Subsidiary, except to the extent of any guarantee permitted by Section 7.8, (i) as to which none of the Parent, any Intermediate Holdco, the Borrower nor any of the Class I Restricted Subsidiaries (x) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (y) is directly or indirectly liable (as a guarantor or otherwise), or (z) constitutes the lender; (ii) no default with respect to which (including any rights that the holders thereof may have to take enforcement action against any Unrestricted Subsidiary or Class II Restricted Subsidiary) would permit (upon notice, lapse of time or both) any holder of any other Indebtedness (other than the Obligations) of the Parent, any Intermediate Holdco, the Borrower or any of the Class I Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity; and (iii) as to which the lenders thereunder will not have any recourse to the Capital Stock or assets of the Parent, any Intermediate Holdco, the Borrower or any of the Class I Restricted Subsidiaries; and

(b) with respect to the Parent, any Intermediate Holdco, the Borrower or any of the Class I Restricted Subsidiaries, (1) for which none of the Parent, any Intermediate Holdco, the Borrower or any of the Class I Restricted Subsidiaries provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) or is directly or indirectly liable (as guarantor or otherwise), other than as primary obligor; and (2) as to which the lenders thereunder will not have any recourse to the Capital Stock or assets of the Parent, any Intermediate Holdco, the Borrower or any of the Class I Restricted Subsidiaries other than the asset financed by such Indebtedness, additions, accessions and improvements thereto and proceeds thereof.

“Non-U.S. Lender”: as defined in Section 2.18(d).

“Note”: any promissory note evidencing any Loan.

“Obligations”: the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and Reimbursement Obligations and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans, the Reimbursement Obligations and all other obligations and liabilities of the Borrower to the Administrative Agent or to any Lender or any Qualified Counterparty, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document, the Letters of Credit, any Specified Hedge Agreement or any other document made, delivered or given in

connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to the Administrative Agent or to any Lender that are required to be paid by the Borrower pursuant hereto) or otherwise; provided, that (i) obligations of the Borrower or any Class I Restricted Subsidiary under any Specified Hedge Agreement shall be secured and guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (ii) any release of Collateral or Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Specified Hedge Agreements.

“Original Closing Date”: October 5, 2006.

“Other Taxes”: any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Parent”: as defined in the preamble hereto.

“Participant”: as defined in Section 10.6(b).

“Participant Register”: as defined in Section 10.6(b).

“Payment Office”: the office of the Administrative Agent specified in Section 10.2 or as otherwise specified from time to time by the Administrative Agent as its payment office by notice to the Borrower and the Lenders.

“PBGC”: the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

“Permitted Acquisition”: on any date of determination, the acquisition in any transaction or series of transactions by the Borrower or any of its Class I Restricted Subsidiaries of a theatre or theatres (or the Capital Stock of a Person that owns a theatre or theatres) approved by the board of directors of the Borrower.

“Permitted Business”: the lines of business conducted by the Borrower, its Subsidiaries, any joint venture to which any of them is a party and such joint venture’s Subsidiaries, or in which any of them has an existing Investment, on the Restatement Closing Date and any business incidental or reasonably related thereto or which is a reasonable extension thereof as determined in good faith by the board of directors of the Borrower and the Parent.

“Permitted Business Investment”: any Investment made in a Permitted Business through agreements, transactions, interests or arrangements that permit one to share risks or costs, achieve economies of scale, pool resources, comply with regulatory requirements regarding local ownership or satisfy other objectives customarily achieved through the conduct of such businesses jointly with third parties, relating to ownership interests in projectors, advertising rights, ticketing rights, Internet properties and other tangible and intangible assets and properties, either directly or through entities the primary business of which is to own or

operate any of the foregoing, including entry into and Investments in the form of or pursuant to, operating agreements, pooling arrangements, service contracts, joint venture agreements, partnership agreements (whether general or limited), limited liability company agreements, subscription agreements, stock purchase agreements, stockholder agreements and other similar arrangements with third parties.

“Permitted Equity Issuance”: any sale or issuance of any common stock of the Parent.

“Permitted Investors”: the collective reference to (a) the Mitchell Family and (b) the Related Parties.

“Person”: an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Peso”: the coin or currency of the United Mexican States as at the time shall be legal tender for payment of public and private debt.

“Peso Borrowing Calculation Date”: the second Business Day prior to any date of incurrence of any Third-Party Peso Loan.

“Peso Borrowing Date”: any date of incurrence of any Third-Party Peso Loan.

“Peso Subfacility”: as defined in Section 2.23.

“Peso Subfacility Amendments”: as defined in Section 2.23.

“Peso Subfacility Borrower”: as defined in Section 2.23(a).

“Peso Subfacility Commitment”: as defined in Section 2.23(a).

“Peso Subfacility Commitment Period”: as defined in Section 2.23(a).

“Peso Subfacility Lenders”: as defined in Section 2.23.

“Peso Subfacility Loans”: as defined in Section 2.23.

“Plan”: at a particular time, any employee benefit plan that is covered by ERISA and in respect of which the Borrower or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Pledged Stock”: as defined in the Guarantee and Collateral Agreement.

“Pricing Grid”: the pricing grid attached hereto as Annex A.

“Pro Forma Cost Savings”: for any period and to the extent not deducted elsewhere in the definition of Consolidated EBITDA, the amount of net cost savings projected by the Borrower in good faith to be realized as a result of any actions taken in connection with a Permitted Acquisition (calculated on a pro forma basis as though such cost savings had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions to the extent not deducted elsewhere in the definition of Consolidated EBITDA, provided that (a) such cost savings are projected by the Borrower in good faith and shall be set forth in the applicable Compliance Certificate for such period and (b) such cost savings are projected to occur within 18 months after the Restatement Closing Date in the case of the Rave Acquisition and within 18 months after the closing date of any other Permitted Acquisition.

“Projections”: as defined in Section 6.2(c).

“Property”: any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock. For the avoidance of doubt, the Capital Stock of a Person is not Property of such Person.

“Qualified Counterparty”: (a) with respect to any Specified Hedge Agreement existing on the Restatement Closing Date, any counterparty thereto that is a Lender or an Affiliate of a Lender on the Restatement Closing Date and (b) with respect to any other Specified Hedge Agreement, any counterparty thereto that, at the time such Specified Hedge Agreement was entered into, was a Lender or an Affiliate of a Lender.

“Qualifying Fixed Discount Term Loans” : as defined in Section 2.25(b).

“Rave Asset Purchase Agreement”: the Asset Purchase Agreement, dated as of November 16, 2012, by and among the Borrower, Rave Real Property Holdco, LLC and certain of its subsidiaries, Rave Cinemas, LLC and RC Processing, LLC.

“Rave Acquisition”: the Borrower’s acquisition of the assets and liabilities specified under the Rave Asset Purchase Agreement.

“Reaffirmation Agreement”: a Reaffirmation Agreement, substantially in the form of Exhibit J.

“Recovery Event”: any settlement of or payment or transfer (voluntary or otherwise) in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of the Borrower or any of its Class I Restricted Subsidiaries.

“Register”: as defined in Section 10.6(d).

“Regulation H”: Regulation H of the Board as in effect from time to time.

“Regulation U”: Regulation U of the Board as in effect from time to time.

“Reimbursement Obligation”: the obligation of the Borrower to reimburse each Issuing Lender pursuant to Section 3.5 for amounts drawn under Letters of Credit issued by such Issuing Lender.

“Reinvestment Deferred Amount”: with respect to any Reinvestment Event, the aggregate Net Cash Proceeds received by the Borrower or any of its Class I Restricted Subsidiaries in connection therewith that are not applied to prepay the Loans pursuant to Section 2.10(b) as a result of the delivery of a Reinvestment Notice.

“Reinvestment Event”: any Asset Sale, Recovery Event or Sale and Leaseback Transaction in respect of which the Borrower has delivered a Reinvestment Notice.

“Reinvestment Notice”: a written notice executed by a Responsible Officer stating that (i) no Default or Event of Default has occurred and is continuing and that the Borrower (directly or indirectly through a Class I Restricted Subsidiary) intends and expects to use all or a specified portion of the Net Cash Proceeds of a Reinvestment Event to acquire or fund the construction of assets (other than inventory) useful in its or a Class I Restricted Subsidiary’s business, or to make capital improvements (other than maintenance capital improvements) to such assets (including leased assets), or (ii) during the six-month period prior to a Reinvestment Event, the Borrower (directly or indirectly through a Class I Restricted Subsidiary) used an amount of funds equal to or greater than all or a specified portion of the Net Cash Proceeds of such Reinvestment Event to acquire or fund the construction of assets (other than inventory) useful in its or a Class I Restricted Subsidiary’s business or to make capital improvements (other than maintenance capital improvements) to such assets (including leased assets).

“Reinvestment Prepayment Amount”: with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto~~less~~ any amount expended prior to the relevant Reinvestment Prepayment Date (including any amount expended during the six-month period prior to such Reinvestment Event) to acquire or fund the construction of assets (other than inventory) useful in the Borrower’s or a Class I Restricted Subsidiary’s business, or to make capital improvements (other than maintenance capital improvements) to such assets (including leased assets).

“Reinvestment Prepayment Date”: with respect to any Reinvestment Event, the earlier of (a) the date occurring six months after such Reinvestment Event, provided that, such date shall be extended, (x) if the Borrower or any of its Class I Restricted Subsidiaries shall have entered into a definitive agreement to acquire or fund the construction of assets useful in the Borrower’s or a Class I Restricted Subsidiary’s business, or to make capital improvements (other than maintenance capital improvements) to such assets (including leased assets) prior to, or within six months after, such Reinvestment Event, to the date which is 15 months after such Reinvestment Event or (y) in the case of a Recovery Event, the Property which was the subject of the Recovery Event was leased by the Borrower or any of its Class I Restricted Subsidiaries pursuant to a lease which requires the Borrower or such Class I Restricted Subsidiary, as the case may be, to rebuild such Property after completion of any construction necessary by the landlord, to the date which is nine months after the date the landlord has completed such necessary construction, and, so long as the Administrative Agent is reasonably satisfied that the Borrower is diligently pursuing such rebuilding, such date shall be further extended by the number of days during which the Borrower is reasonably delayed in completing such rebuilding as a result of events of force majeure, and (b) the date on which the Borrower shall have determined not to, or shall have otherwise ceased to, acquire or fund the construction of assets useful in the Borrower’s or a Class I Restricted Subsidiary’s business, or to make capital improvements (other than maintenance capital improvements) to such assets (including leased assets) with all or any portion of the relevant Reinvestment Deferred Amount.

“Related Fund”: with respect to any Lender, any fund that (x) invests in commercial loans and (y) is managed or advised by the same investment advisor as such Lender or an Affiliate of such investment advisor, by such Lender or an Affiliate of such Lender.

“Related Party”: (a) with respect to the Mitchell Family, any group which includes any member or members of the Mitchell Family if a majority of the Capital Stock of the Parent held by such group is beneficially owned (including the power to vote such Capital Stock of the Parent) by (x) such member or members or (y) one or more affiliates at least 80% of the equity of which are owned by one or more of such member or members, and (b) any trust, corporation, partnership or other entity, the beneficiaries, stockholders, partners, owners or Persons beneficially holding an 80% or more controlling interest of which consist of Permitted Investors.

“Reorganization”: with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

“Replacement Term Loans”: as defined in the penultimate paragraph of Section 10.1.

“Reportable Event”: any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the 30 day notice period is waived under subsections .27, .28, .29, .30, .31, .32, .34 or .35 of PBGC Reg. § 4043.

“Required Lenders”: at any time, the holders of more than 50% of (a) until the Restatement Closing Date, the Commitments and (b) thereafter, the sum of (i) the aggregate unpaid principal amount of the Term Loans then outstanding and (ii) the Total Revolving Credit Commitments then in effect or, if the Revolving Credit Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding.

“Required Prepayment Lenders”: the Majority Facility Lenders in respect of each Facility.

“Requirement of Law”: as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Responsible Officer”: the chief executive officer, president or chief financial officer of the Borrower, but in any event, with respect to financial matters, the chief financial officer or treasurer of the Borrower.

“Restatement Closing Date”: the date on which the conditions precedent set forth in Section 5.1 shall have been satisfied or waived, which date is December 18, 2012.



“Restatement Date Applicable Amount”: \$1,351,211,000.

“Restricted Payments”: as defined in Section 7.6.

“Restricted Subsidiary”: any Subsidiary of the Borrower that is not an Unrestricted Subsidiary.

“Revolving Credit Commitment”: as to any Lender, the obligation of such Lender, if any, to make Revolving Credit Loans and participate in Letters of Credit in an aggregate principal and/or face amount not to exceed the amount set forth under the heading “Revolving Credit Commitment” opposite such Lender’s name on Schedule 1.1C, or, as the case may be, in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The original aggregate amount of the Total Revolving Credit Commitments on the Restatement Closing Date is \$100,000,000.

“Revolving Credit Commitment Period”: the period from and including the Restatement Closing Date to the Revolving Credit Termination Date or such earlier date on which the Revolving Credit Commitments are terminated in accordance with the terms of this Agreement.

“Revolving Credit Facility”: as defined in the definition of “Facility” in this Section 1.1.

“Revolving Credit Lender”: each Lender that has a Revolving Credit Commitment or that is the holder of Revolving Credit Loans.

“Revolving Credit Loans”: as defined in Section 2.4.

“Revolving Credit Note”: as defined in Section 2.6(e).

“Revolving Credit Percentage”: as to any Revolving Credit Lender at any time, the percentage which such Lender’s Revolving Credit Commitment then constitutes of the Total Revolving Credit Commitments (or, at any time after the Revolving Credit Commitments shall have expired or terminated, the percentage which the aggregate amount of such Lender’s Revolving Extensions of Credit then outstanding constitutes of the amount of the Total Revolving Extensions of Credit then outstanding). Notwithstanding the foregoing, in the case of Section 2.24 when a Defaulting Lender shall exist, Revolving Credit Percentages shall be determined without regard to any Defaulting Lender’s Revolving Credit Commitment.

“Revolving Credit Termination Date”: the date which is the fifth anniversary of the Restatement Closing Date.

“Revolving Extensions of Credit”: as to any Revolving Credit Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Credit Loans made by such Lender then outstanding and (b) such Lender’s Revolving Credit Percentage of the L/C Obligations then outstanding.

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“S&P”: Standard & Poor’s Ratings Services.

“Sale and Leaseback Transaction”: any sale and leaseback transaction conducted by the Borrower or any Class I Restricted Subsidiary, but excluding transactions of the type described in EITF 97-10.

“SEC”: the Securities and Exchange Commission (or successors thereto or an analogous Governmental Authority).

“Senior Note Indenture”: the collective reference to the 8.625% Senior Note Indenture, the 5.125% Senior Note Indenture and any other indenture governing the terms of any senior indebtedness permitted under this Credit Agreement.

“Secured Parties”: as defined in the Guarantee and Collateral Agreement.

“Security Documents”: the collective reference to the Guarantee and Collateral Agreement, the Mortgages, the Reaffirmation Agreement and all other security documents hereafter delivered to the Administrative Agent granting a Lien on any Property of any Person to secure the obligations and liabilities of any Loan Party under any Loan Document.

“Senior Subordinated Note Indenture”: the Indenture entered into by the Borrower and the Subsidiary Guarantors in connection with the issuance of the Senior Subordinated Notes, together with all instruments and other agreements entered into by the Borrower or any Subsidiary Guarantor in connection therewith, as the same may be amended, supplemented or otherwise modified from time to time in accordance with Section 7.9 or refinanced pursuant to Section 7.2(f).

“Senior Subordinated Notes”: \$200,000,000 aggregate outstanding principal amount of the Borrower’s 7.375% Senior Subordinated Notes due 2021, as the same may be amended, supplemented or otherwise modified from time to time in accordance with Section 7.9 or refinanced pursuant to Section 7.2(f).

“Single Employer Plan”: any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

“Solvent”: with respect to any Person, as of any date of determination, (a) the amount of the “present fair saleable value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise”, as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) “debt” means liability on a “claim”, and (ii) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

“Special Prepayment”: as defined in Section 2.25(a).

“Special Prepayment Face Amount”: as defined in Section 2.25(a).

“Special Prepayment Funded Amount”: the aggregate amount of proceeds applied by the Borrower in connection with any Special Prepayment.

“Special Prepayment Notice”: as defined in Section 2.25(a).

“Specified Change of Control”: a “Change of Control”, or like event, as defined in any outstanding Senior Note Indenture or Senior Subordinated Note Indenture.

“Specified Hedge Agreement”: any Hedge Agreement entered into by (a) the Borrower or any of its Class I Restricted Subsidiaries and (b) any Person that, at the time such Hedge Agreement is entered into, is a Qualified Counterparty.

“Specified Reorganization”: any transaction or series of transactions pursuant to which one or more intermediate holding companies between the Parent and the Borrower (each, an “Intermediate Holdco”) is established.

“Subsidiary”: as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guarantor”: each Class I Restricted Subsidiary that is a Wholly Owned Subsidiary as of the Restatement Closing Date and each other Subsidiary that becomes a party to the Guarantee and Collateral Agreement on or after the Restatement Closing Date, in each case, unless and until released in accordance with the terms of this Agreement.

“Syndication Agent”: as defined in the preamble hereto.

“Term Loan”: as defined in Section 2.1.

“Term Loan Commitment”: as to any Lender, the obligation of such Lender, if any, to make a Term Loan to the Borrower hereunder in a principal amount not to exceed the amount set forth under the heading “Term Loan Commitment” opposite such Lender’s name on Schedule 1.1C, or, as the case may be, in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The original aggregate amount of the Term Loan Commitments on the Restatement Closing Date is \$700,000,000.

“Term Loan Facility”: as defined in the definition of “Facility” in this Section 1.1.

“Term Loan Lender”: collectively, each Lender that has a Term Loan Commitment or is the holder of a Term Loan.

“Term Loan Maturity Date”: the date which is the seventh anniversary of the Restatement Closing Date.

“Term Loan Percentage”: as to any Term Loan Lender at any time, the percentage which such Lender’s Term Loan Commitment then constitutes of the aggregate Term Loan Commitments (or, at any time after the Restatement Closing Date, the percentage which the aggregate principal amount of such Lender’s Term Loan then outstanding constitutes of the aggregate principal amount of the Term Loans then outstanding).

“Term Note”: as defined in Section 2.6(e).

“Third-Party Peso Loans”: as defined in Section 7.2(n).

“Total Revolving Credit Commitments”: at any time, the aggregate amount of the Revolving Credit Commitments then in effect.

“Total Revolving Extensions of Credit”: at any time, the aggregate amount of the Revolving Extensions of Credit of the Revolving Credit Lenders outstanding at such time.

“Transactions”: as defined in the recitals hereto.

“Transferee”: as defined in Section 10.14.

“Type”: as to any Loan, its nature as a Base Rate Loan or a Eurodollar Loan.

“Unrestricted Subsidiary”: a collective reference to:

(a) any Subsidiary of the Borrower that does not directly, indirectly, or beneficially own or hold any Capital Stock of, or own or hold any Lien on any Property of, the Parent, any Intermediate Holdco, the Borrower or any of its Class I Restricted Subsidiaries and that, at the time of determination, shall be an Unrestricted Subsidiary as designated by the board of directors of the Borrower and upon written notice to the Administrative Agent or as listed as such on Schedule 4.15(a); provided, that such Subsidiary at the time of such designation (i) has no Indebtedness other than Indebtedness permitted pursuant to Section 7.2(i), (j), (k), (l), (o), (p) and (q); (ii) is not a party to any agreement, contract, arrangement or understanding with the Parent, any Intermediate Holdco, the Borrower or any of its Class I Restricted Subsidiaries unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Parent, such Intermediate Holdco, the Borrower or such Class I

Restricted Subsidiary, as the case may be, than those that might be obtained at the time from Persons who are not Affiliates of the Borrower; (iii) in the case of the designation of a Class I Restricted Subsidiary, the Applicable Amount immediately prior to such designation is at least equal to the fair market value (as of the time of such designation and determined in accordance with the definition of “Applicable Amount”) of the Class I Restricted Subsidiary to be so designated; (iv) is a Person as to which none of the Parent, any Intermediate Holdco, the Borrower or any of its Class I Restricted Subsidiaries has any direct or indirect obligation (x) to subscribe for additional Capital Stock or (y) to maintain or preserve such Person’s financial condition or to cause such Person to achieve any specified level of operating results; and (v) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Parent, any Intermediate Holdco, the Borrower or any of its Class I Restricted Subsidiaries; and

(b) any Subsidiary of an Unrestricted Subsidiary;

provided that, any Unrestricted Subsidiary may be designated as a Restricted Subsidiary pursuant to Section 6.11.

“Wholly Owned Subsidiary”: as to any Person, (a) any other Person all of the Capital Stock of which with voting power under ordinary circumstances to elect directors (or Persons having similar or corresponding powers and responsibilities) (other than directors’ qualifying shares required by law and shares required by applicable law to be held by a Person other than the Borrower or its Subsidiaries) is owned by such Person directly and/or through other Wholly Owned Subsidiaries and (b) any Subsidiary of which the Parent owns, directly and indirectly, less than all of the Capital Stock having such voting power, but the Parent and its Affiliates otherwise have the power, without the consent of any other stockholder or other equity holder, to cause such Subsidiary to become a Subsidiary Guarantor.

1.2 Other Definitional Provisions. (a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, accounting terms relating to the Parent, the Borrower and its Subsidiaries not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP (provided that all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to (i) any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at “fair value”, as defined therein and (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof).

(c) The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(e) All calculations of the financial ratio set forth in Section 7.1 shall be calculated to the same number of decimal places as the relevant ratios are expressed in and shall be rounded upward if the number in the decimal place immediately following the last calculated decimal place is five or greater. For example, if the relevant ratio is to be calculated to the hundredth decimal place and the calculation of the ratio is 5.126, the ratio will be rounded up to 5.13.

(f) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(g) For avoidance of doubt, (i) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, (ii) the word “will” shall be construed to have the same meaning and effect as the word “shall”, (iii) the word “incur” shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings), (iv) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, accounts, leasehold interests and contract rights, and (v) references to agreements or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated or otherwise modified from time to time.

(h) Any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

## SECTION 2. AMOUNT AND TERMS OF COMMITMENTS

2.1 Term Loan Commitments. Subject to the terms and conditions hereof, the Term Loan Lenders severally agree to (i) make term loans (each, a Term Loan) to the Borrower on the Restatement Closing Date and/or (ii) convert their Existing Term Loans into Term Loans by indicating such conversion on a cashless roll letter agreement to be delivered to the Administrative Agent on or prior to the Restatement Closing Date. For each Term Loan Lender, the sum of clause (i) and (ii) of this Section 2.1 shall be equal to the amount of the Term Loan Commitment of such Lender. All such conversions shall be deemed to be a part of borrowing of Term Loans on the Restatement Closing Date for all purposes hereunder. The Term Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.11.

2.2 Procedure for Term Loan Borrowing. The Borrower shall deliver to the Administrative Agent a Borrowing Notice (which Borrowing Notice must be received by the Administrative Agent prior to 10:00 A.M., New York City time, at least one Business Day prior to the anticipated Restatement Closing Date) requesting that the Term Loan Lenders make the Term Loans to be made on the Restatement Closing Date. The Term Loans made on the Restatement Closing Date may be Base Rate Loans or Eurodollar Loans. Upon receipt of such Borrowing Notice the Administrative Agent shall promptly notify each Term Loan Lender thereof. Not later than 12:00 Noon, New York City time, on the Restatement Closing Date each Term Loan Lender shall make available to the Administrative Agent at the Funding Office an amount in immediately available funds equal to the Term Loan or Term Loans to be made by such Lender. The Administrative Agent shall promptly make available to the Borrower the aggregate of the amounts made available to the Administrative Agent by the Term Loan Lenders, in like funds as received by the Administrative Agent.

2.3 Repayment of Term Loans. The Term Loan of each Term Loan Lender shall mature in 28 consecutive quarterly installments, commencing on March 31, 2013, each of which shall be in an amount equal to such Lender's Term Loan Percentage multiplied by the percentage set forth below opposite such installment of the aggregate Term Loans made on the Restatement Closing Date:

<u>Installment</u>	<u>Principal Amount</u>
March 31, 2013	0.25%
June 30, 2013	0.25%
September 30, 2013	0.25%
December 31, 2013	0.25%
March 31, 2014	0.25%
June 30, 2014	0.25%
September 30, 2014	0.25%
December 31, 2014	0.25%
March 31, 2015	0.25%
June 30, 2015	0.25%
September 30, 2015	0.25%
December 31, 2015	0.25%
March 31, 2016	0.25%
June 30, 2016	0.25%
September 30, 2016	0.25%
December 31, 2016	0.25%
March 31, 2017	0.25%
June 30, 2017	0.25%
September 30, 2017	0.25%
December 31, 2017	0.25%
March 31, 2018	0.25%
June 30, 2018	0.25%
September 30, 2018	0.25%
December 31, 2018	0.25%
March 31, 2019	0.25%

<u>Installment</u>	<u>Principal Amount</u>
June 30, 2019	0.25%
September 30, 2019	0.25%
Term Loan Maturity Date	Aggregate unpaid principal amount of the Term Loans

2.4 Revolving Credit Commitments. (a) (a) Subject to the terms and conditions hereof, the Revolving Credit Lenders severally agree to make revolving credit loans (“Revolving Credit Loans”) to the Borrower from time to time during the Revolving Credit Commitment Period in an aggregate principal amount at any one time outstanding for each Revolving Credit Lender which, when added to such Lender’s Revolving Credit Percentage of the L/C Obligations then outstanding does not exceed the amount of such Lender’s Revolving Credit Commitment. During the Revolving Credit Commitment Period the Borrower may use the Revolving Credit Commitments by borrowing, prepaying the Revolving Credit Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Revolving Credit Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5 and 2.11, provided that no Revolving Credit Loan shall be made as a Eurodollar Loan after the day that is one month prior to the Revolving Credit Termination Date.

(b) The Borrower shall repay all outstanding Revolving Credit Loans on the Revolving Credit Termination Date.

2.5 Procedure for Revolving Credit Borrowing. The Borrower may borrow under the Revolving Credit Commitments on any Business Day during the Revolving Credit Commitment Period, provided that the Borrower shall deliver to the Administrative Agent a Borrowing Notice (which Borrowing Notice must be received by the Administrative Agent prior to 12:00 Noon, New York City time, (a) three Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (b) one Business Day prior to the requested Borrowing Date, in the case of Base Rate Loans). Any Revolving Credit Loans made on the Restatement Closing Date shall initially be Base Rate Loans. Each borrowing of Revolving Credit Loans under the Revolving Credit Commitments shall be in an amount equal to (x) in the case of Base Rate Loans, \$1,000,000 or a whole multiple of \$200,000 in excess thereof (or, if the then aggregate Available Revolving Credit Commitments are less than \$1,000,000, such lesser amount) and (y) in the case of Eurodollar Loans, \$3,000,000 or a whole multiple of \$500,000 in excess thereof. Upon receipt of any such Borrowing Notice from the Borrower, the Administrative Agent shall promptly notify each Revolving Credit Lender thereof. Each Revolving Credit Lender will make its Revolving Credit Percentage of the amount of each borrowing of Revolving Credit Loans available to the Administrative Agent for the account of the Borrower at the Funding Office prior to 12:00 Noon, New York City time, on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be promptly made available to the Borrower by the Administrative Agent crediting the account of the Borrower on the books of such office with the aggregate of the amounts made available to the Administrative Agent by the Revolving Lenders and in like funds as received by the Administrative Agent.



2.6 Repayment of Loans; Evidence of Debt (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of the appropriate Revolving Credit Lender or Term Loan Lender, as the case may be, (i) the then unpaid principal amount of each Revolving Credit Loan of such Revolving Credit Lender on the Revolving Credit Termination Date (or on such earlier date on which (x) principal payments are required by Section 2.8 or 2.10 or (y) the Loans become due and payable pursuant to Section 8.1) and (ii) the principal amount of each Term Loan of such Term Loan Lender in installments according to the amortization schedule set forth in Section 2.3 (or on such earlier date on which (x) principal payments are required by Section 2.10 or (y) the Loans become due and payable pursuant to Section 8.1) which shall be applied pursuant to Section 2.16. The Borrower hereby further agrees to pay interest on the unpaid principal amount of the Loans from time to time outstanding from the date hereof until payment in full thereof at the rates per annum, and on the dates, set forth in Section 2.13.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to such Lender resulting from each Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent, on behalf of the Borrower, shall maintain the Register pursuant to Section 10.6(d), and a subaccount therein for each Lender, in which shall be recorded (i) the amount of each Loan made hereunder and any Note evidencing such Loan, the Type of such Loan and each Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) both the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Section 2.6(b) shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

(e) The Borrower agrees that, upon the request to the Administrative Agent by any Lender, the Borrower will promptly execute and deliver to such Lender a promissory note of the Borrower evidencing any Term Loans or Revolving Credit Loans, as the case may be, of such Lender, substantially in the forms of Exhibit G-1 or G-2, respectively (a "Term Note" or "Revolving Credit Note", respectively), with appropriate insertions as to date and principal amount; provided, that delivery of Notes shall not be a condition precedent to the occurrence of the Restatement Closing Date or the making of the Loans on the Restatement Closing Date.

2.7 Commitment Fees, etc. (a) The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Credit Lender a commitment fee (a "Commitment Fee") for the period from and including the Restatement Closing Date to the last day of the Revolving Credit Commitment Period, computed at the Commitment Fee Rate on the average daily amount of the Available Revolving Credit Commitment of such Lender during the period for which payment is made, payable quarterly in arrears on the last day of each March, June, September and December and on the Revolving Credit Termination Date, commencing on March 31, 2013.

(b) The Borrower agrees to pay to the Administrative Agent the fees in the amounts and on the dates from time to time agreed to in writing by the Borrower and the Administrative Agent.

2.8 Termination or Reduction of Revolving Credit Commitments The Borrower shall have the right, upon not less than three Business Days' notice to the Administrative Agent, to terminate the Revolving Credit Commitments or, from time to time, to reduce the aggregate amount of the Revolving Credit Commitments; provided that no such termination or reduction of Revolving Credit Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Credit Loans made on the effective date thereof, the Total Revolving Extensions of Credit would exceed the Total Revolving Credit Commitments provided, further, that such notice may state that it is conditioned upon the effectiveness of other credit facilities or other transactions, which such notice may be revoked by the Borrower (by notice to the Administrative Agent no later than 10:00 A.M., New York City time, on the specified effective date) if such condition is not satisfied. Any such reduction shall be in an amount equal to \$1,000,000, or a whole multiple thereof, and shall reduce permanently the Revolving Credit Commitments then in effect.

2.9 Optional Prepayments. (a) The Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty (other than pursuant to Section 2.19), upon irrevocable notice delivered to the Administrative Agent at least three Business Days prior thereto in the case of Eurodollar Loans and at least one Business Day prior thereto in the case of Base Rate Loans, which notice shall specify the date and amount of such prepayment, whether such prepayment is of Term Loans or Revolving Credit Loans, and whether such prepayment is of Eurodollar Loans or Base Rate Loans; provided, that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.19. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of Revolving Credit Loans that are Base Rate Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Term Loans and Revolving Credit Loans shall be in an aggregate principal amount of \$1,000,000 or a whole multiple of \$200,000 in excess thereof. Notwithstanding anything to the contrary in this Section 2.9, any optional prepayment of the Term Loans made on or prior to the first anniversary of the Restatement Closing Date with the proceeds of a substantially concurrent issuance or incurrence of new term loans which (a) are incurred for the primary purpose of refinancing the Term Loans and decreasing the Applicable Margin with respect thereto and (b) otherwise have terms and conditions (and are in an aggregate principal amount) substantially the same as those of the Term

Loans, shall be subject to a prepayment premium of 1.00% of the aggregate amount of such prepayment. Amounts to be applied as optional prepayments pursuant to this Section shall be applied, first, to the prepayment of the Term Loans and second, to the prepayment of the Revolving Credit Loans and as specified in Section 2.16. Such prepayment premium shall be allocated ratably among the Term Loan Lenders in accordance with such Lenders' percentage of the aggregate amount of Term Loans prepaid.

(b) The Borrower may prepay Term Loans as specified in Section 2.25. Any prepayment pursuant to Section 2.25 is not subject to Section 2.9(a).

2.10 Mandatory Prepayments. (a) Unless the Required Prepayment Lenders shall otherwise agree, if on any date the Parent, the Borrower or any of its Class I Restricted Subsidiaries shall incur any Indebtedness (excluding any Indebtedness incurred in accordance with Section 7.2), an amount equal to 100% of the Net Cash Proceeds thereof shall be applied on the date of such issuance or incurrence toward the prepayment of the Loans as set forth in Section 2.10(c). The provisions of this Section do not constitute a consent to the incurrence of any Indebtedness by the Parent, the Borrower or any of its Subsidiaries not permitted by Section 7.2.

(b) Unless the Required Prepayment Lenders shall otherwise agree, if the Borrower or any of its Class I Restricted Subsidiaries shall receive Net Cash Proceeds from any Asset Sale or any Recovery Event then, unless a Reinvestment Notice shall be delivered in respect thereof not later than 10 Business Days after such date of receipt by the Borrower or any of its Class I Restricted Subsidiaries of such Net Cash Proceeds, the Loans shall be prepaid by an amount equal to the amount of such Net Cash Proceeds (excluding any amounts subject to any such Reinvestment Notice), as set forth in Section 2.10(c); provided, that, notwithstanding the foregoing, on each Reinvestment Prepayment Date the Loans shall be prepaid by an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event, as set forth in Section 2.10(c). The provisions of this Section do not constitute a consent to the consummation of any Disposition not permitted by Section 7.5.

(c) Amounts to be applied as prepayments pursuant to this Section shall be applied, first, to the prepayment of the Term Loans and second, to the prepayment of the Revolving Credit Loans and as specified in Section 2.16. Any such mandatory prepayment of the Revolving Credit Loans pursuant to this Section 2.10 shall not result in a mandatory reduction of the Revolving Credit Commitments. Amounts prepaid in respect of Term Loans pursuant to this Section 2.10 may not be reborrowed.

2.11 Conversion and Continuation Options. (a) Subject to Section 2.19, the Borrower may elect from time to time to convert Eurodollar Loans to Base Rate Loans by giving the Administrative Agent at least two Business Days' prior irrevocable notice of such election. The Borrower may elect from time to time to convert Base Rate Loans to Eurodollar Loans by giving the Administrative Agent at least three Business Days' prior irrevocable notice of such election (which notice shall specify the length of the initial Interest Period therefor), provided that no Base Rate Loan under a particular Facility may be converted into a Eurodollar Loan (i) when any Event of Default has occurred and is continuing and the Administrative Agent has, or the Majority Facility Lenders have, determined in its or their sole discretion not to permit such conversions or (ii) after the date that is one month prior to the final scheduled termination or maturity date of such Facility. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) The Borrower may elect to continue any Eurodollar Loan as such upon the expiration of the then current Interest Period with respect thereto by giving irrevocable notice to the Administrative Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans, provided that no Eurodollar Loan under a particular Facility may be continued as such (i) when any Event of Default has occurred and is continuing and the Administrative Agent has, or the Majority Facility Lenders in respect of such Facility have, determined in its or their sole discretion not to permit such continuations or (ii) after the date that is one month prior to the final scheduled termination or maturity date of such Facility, and provided, further, that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso, such Loans shall be converted automatically to Base Rate Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

2.12 Minimum Amounts and Maximum Number of Eurodollar Tranches. Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions, continuations and optional prepayments of Eurodollar Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Eurodollar Tranche shall be equal to \$3,000,000 or a whole multiple of \$500,000 in excess thereof and (b) no more than 20 Eurodollar Tranches shall be outstanding at any one time.

2.13 Interest Rates and Payment Dates. (a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such day plus the Applicable Margin in effect for such day.

(b) Each Base Rate Loan shall bear interest for each day on which it is outstanding at a rate per annum equal to the Base Rate in effect for such day plus the Applicable Margin in effect for such day.

(c) (i) If all or a portion of the principal amount of any Loan or Reimbursement Obligation shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount (to the extent legally permitted) shall bear interest at a rate per annum that is equal to (x) in the case of the Loans, the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section plus 2% or (y) in the case of Reimbursement Obligations, the rate applicable to Base Rate Loans under the Revolving Credit Facility plus 2%, and (ii) if all or a portion of any interest payable on any Loan or Reimbursement Obligation or any commitment fee or other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum equal to the rate then applicable to Base Rate Loans under the relevant Facility plus 2% (or, in the case of any such other amounts that do not relate to a particular Facility, the rate then applicable to Base Rate Loans under the Revolving Credit Facility plus 2%), in each case, with respect to clauses (i) and (ii) above, from the date of such non-payment until such amount is paid in full (after as well as before judgment).

(d) Interest shall be payable in arrears on each Interest Payment Date, provided that interest accruing pursuant to paragraph (c) of this Section shall be payable from time to time on demand.

2.14 Computation of Interest and Fees. (a) Interest, fees and commissions payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to Base Rate Loans on which interest is calculated on the basis of the Prime Rate, the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the Base Rate or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate pursuant to Section 2.14(a).

2.15 Inability to Determine Interest Rate. If prior to the first day of any Interest Period:

(a) the Administrative Agent shall have determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or

(b) the Administrative Agent shall have received notice from the Majority Facility Lenders in respect of the relevant Facility that the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Loans during such Interest Period,

the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower and the relevant Lenders as soon as practicable thereafter. If such notice is given (x) any Eurodollar Loans denominated in Dollars under the relevant Facility requested to be made on the first day of such Interest Period shall be made as Base Rate Loans, (y) any Loans under the relevant Facility that were to have been converted on the first day of such Interest Period to Eurodollar Loans shall be continued as Base Rate Loans and (z) any outstanding Eurodollar Loans under the relevant Facility shall be converted, on the last day of the then current Interest Period with respect thereto, to Base Rate Loans. Until such notice has been withdrawn by the Administrative Agent, no further Eurodollar Loans under the relevant Facility shall be made or continued as such, nor shall the Borrower have the right to convert Loans under the relevant Facility to Eurodollar Loans.

2.16 Pro Rata Treatment and Payments. (a) Each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee or Letter of Credit fee, and any reduction of the Commitments of the Lenders, shall be made pro rata according to the respective Term Loan Percentages or Revolving Credit Percentages, as the case may be, of the relevant Lenders.

(b) Except as otherwise provided in Section 2.25, each payment (including each prepayment) by the Borrower on account of principal of and interest on the Term Loans shall be allocated among the Lenders holding such Term Loans pro rata based on the principal amount of such Term Loans held by such Lenders. The amount of each principal prepayment of the Term Loans shall be applied first, to the four immediately succeeding installments of such Term Loans and, second, to the remaining installments of such Term Loans pro rata based on the remaining outstanding principal amount of such installments. Amounts repaid or prepaid on account of the Term Loans may not be reborrowed.

(c) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Revolving Credit Loans shall be made pro rata according to the respective outstanding principal amounts of the Revolving Credit Loans then held by the Revolving Credit Lenders. Each payment in respect of Reimbursement Obligations in respect of any Letter of Credit shall be made to the Issuing Lender that issued such Letters of Credit.

(d) The application of any payment of Loans under any Facility (including optional and mandatory prepayments) shall be made, first, to Base Rate Loans under such Facility and, second, to Eurodollar Loans under such Facility. Each payment of the Loans (except in the case of Revolving Credit Loans that are Base Rate Loans) shall be accompanied by accrued interest to the date of such payment on the amount paid.

(e) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without setoff or counterclaim and shall be made prior to 12:00 Noon, New York City time, on the due date thereof to the Administrative Agent, for the account of the relevant Lenders, at the Payment Office, in Dollars and in immediately available funds. Any payment made by the Borrower after 12:00 Noon, New York City time, on any Business Day shall be deemed to have been on the next following Business Day. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(f) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent, on demand, such amount with interest thereon at a rate equal to the greater of (i) the Federal Funds Effective Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this paragraph shall be conclusive in the absence of manifest error. If such Lender's share of such borrowing is not made available to the Administrative Agent by such Lender within three Business Days after such Borrowing Date, the Administrative Agent shall also be entitled to recover such amount with interest thereon at the rate per annum applicable to Base Rate Loans under the relevant Facility, on demand, from the Borrower.

(g) Unless the Administrative Agent shall have been notified in writing by the Borrower prior to the date of any payment due to be made by the Borrower hereunder that the Borrower will not make such payment to the Administrative Agent, the Administrative Agent may assume that the Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the Lenders their respective pro rata shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower within three Business Days after such due date, the Administrative Agent shall be entitled to recover, on demand, from each Lender to which any amount which was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the greater of (i) the Federal Funds Effective Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower.

(h) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.16(f), 2.16(g), 3.4(a) or 9.7, then the Administrative Agent may, in its discretion and notwithstanding any contrary provision hereof, (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender for the benefit of the Administrative Agent or the Issuing Lender to satisfy such Lender's obligations to it under such Sections until all such unsatisfied obligations are fully paid, and/or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender under any such Section, in the case of each of clauses (i) and (ii) above, in any order as determined by the Administrative Agent in its discretion.

2.17 Requirements of Law. (a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority made subsequent to the date hereof:

(i) shall subject any Lender to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any Application or any Eurodollar Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes covered by Section 2.18 and changes in the rate of tax on the overall net income of such Lender);

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit (or participations therein) by, or any other acquisition of funds by, any office of such Lender that is not otherwise included in the determination of the Eurodollar Rate hereunder; or

(iii) shall impose on such Lender any other condition;

and the result of any of the foregoing is to increase the cost to such Lender, by an amount which such Lender deems to be material, of making, converting into, continuing or maintaining Eurodollar Loans or issuing or participating in Letters of Credit, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, the Borrower shall promptly pay such Lender, upon its demand, any additional amounts necessary to compensate such Lender for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this Section, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(b) If any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy, liquidity requirements or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy or liquidity (whether or not having the force of law) from any Governmental Authority made subsequent to the date hereof shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder or under or in respect of any Letter of Credit to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy and liquidity requirements) by an amount deemed by such Lender to be material, then from time to time, after submission by such Lender to the Borrower (with a copy to the Administrative Agent) of a written request therefor, the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such corporation for such reduction.

(c) Notwithstanding anything herein to the contrary, (i) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or by United States or foreign regulatory authorities, in each case pursuant to Basel III, and (ii) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a change in law, regardless of the date enacted, adopted, issued or implemented.



(d) A certificate as to any additional amounts payable pursuant to this Section submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. The obligations of the Borrower pursuant to this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(e) The Borrower shall not be required to compensate a Lender pursuant to this Section for any amounts incurred more than six months prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefor; provided that, if the circumstances giving rise to such claim have a retroactive effect, then such six-month period shall be extended to include the period of such retroactive effect. In addition, the Borrower shall not be required to compensate a Lender pursuant to this Section for Eurocurrency Reserve Requirements to the extent such compensation would duplicate compensation included in the Eurodollar Rate pursuant to the definition thereof.

2.18 Taxes. (a) All payments made by or on behalf of any Loan Party under this Agreement or any Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed on any Agent or any Lender as a result of a present or former connection between such Agent or such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from such Agent's or such Lender's having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document) and taxes imposed under FATCA. If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("Non-Excluded Taxes") or any Other Taxes are required to be withheld from any amounts payable to any Agent or any Lender hereunder, the amounts so payable to such Agent or such Lender shall be increased to the extent necessary to yield to such Agent or such Lender (after payment of all Non-Excluded Taxes and Other Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement; provided, however, that the Borrower shall not be required to increase any such amounts payable to any Lender with respect to any Non-Excluded Taxes (i) that are attributable to such Lender's failure to comply with the requirements of paragraph (d) or (e) of this Section or (ii) that are United States withholding taxes imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement, except to the extent that such Lender's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Borrower with respect to such Non-Excluded Taxes pursuant to this Section 2.18(a).

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Whenever any Non-Excluded Taxes or Other Taxes are payable by the Borrower, as promptly as possible thereafter the Borrower shall send to the Administrative Agent for the account of the relevant Agent or Lender, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof. If the Borrower

fails to pay any Non-Excluded Taxes or Other Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, the Borrower shall indemnify the Agents and the Lenders for any incremental taxes, interest or penalties that may become payable by any Agent or any Lender as a result of any such failure. The Loan Parties shall indemnify any Credit Party for any Non-Excluded Taxes or Other Taxes imposed directly on the Credit Party. The agreements in this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(d) (i) Each Lender (or Transferee) that is a "United States person" as defined in Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed copies of U.S. Internal Revenue Service Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal withholding tax.

(ii) Each Lender (or Transferee) that is not a citizen or resident of the United States of America, a corporation, partnership or other entity created or organized in or under the laws of the United States of America (or any jurisdiction thereof), or any estate or trust that is subject to federal income taxation regardless of the source of its income (a "Non-U.S. Lender") shall deliver to the Borrower and the Administrative Agent (or, in the case of a Participant, to the Lender from which the related participation shall have been purchased) two copies of either U.S. Internal Revenue Service Form W-8BEN, Form W-8ECI, or Form W-8IMY, together with all applicable underlying Internal Revenue Service forms (in the case of a Non-U.S. Lender that is treated as a partnership for U.S. federal income tax purposes), or any subsequent versions thereof or successors thereto, or, in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest" a statement substantially in the form of Exhibit H-1, H-2, H-3 or H-4, as applicable, and a Form W-8BEN, or any subsequent versions thereof or successors thereto properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by the Borrower under this Agreement and the other Loan Documents. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation). In addition, each Non-U.S. Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Non-U.S. Lender shall not be required to deliver any form pursuant to this paragraph that such Non-U.S. Lender is not legally able to deliver.

(iii) If a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for this clause (iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(e) A Lender that is entitled to an exemption from or reduction of non-U.S. withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate, provided that such Lender is legally entitled to complete, execute and deliver such documentation and in such Lender's reasonable judgment such completion, execution or submission would not materially prejudice the legal position of such Lender.

2.19 Indemnity. The Borrower agrees to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment (or conversion from Eurodollar Loans) after the Borrower has given a notice thereof in accordance with the provisions of this Agreement or (c) the making of a prepayment or conversion of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Eurodollar market. The Borrower shall not be required to compensate a Lender pursuant to this Section for any amounts incurred more than six months prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefor. A

certificate as to any amounts payable pursuant to this Section submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

2.20 Illegality. Notwithstanding any other provision herein, if the adoption of or any change in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for any Lender to make or maintain Eurodollar Loans as contemplated by this Agreement, (a) the commitment of such Lender hereunder to make Eurodollar Loans, continue Eurodollar Loans as such and convert Base Rate Loans to Eurodollar Loans shall forthwith be canceled and (b) such Lender's Loans then outstanding as Eurodollar Loans, if any, shall be converted automatically to Base Rate Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Eurodollar Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 2.19.

2.21 Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.17, 2.18 or 2.20 with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans affected by such event with the object of avoiding the consequences of such event; provided, that such designation is made on terms that, in the sole judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section shall affect or postpone any of the obligations of any Borrower or the rights of any Lender pursuant to Section 2.17, 2.18 or 2.20.

2.22 Replacement of Lenders under Certain Circumstances. The Borrower shall be permitted to replace any Lender that (a) requests reimbursement for amounts owing pursuant to Section 2.17 or 2.18 or gives a notice of illegality pursuant to Section 2.20, (b) becomes a Defaulting Lender or (c) does not consent to any proposed amendment, supplement, modification, consent or waiver of any provision of this Agreement or any other Loan Document that requires the consent of each of the Lenders or each of the Lenders affected thereby (so long as the consent of the Required Lenders (with the percentage in such definition being deemed to be more than 50% for this purpose) has been obtained), with a replacement lender; provided that (i) such replacement does not conflict with any Requirement of Law, (ii) no Event of Default shall have occurred and be continuing at the time of such replacement, (iii) prior to any such replacement, such Lender shall have taken no action under Section 2.21 so as to eliminate the continued need for payment of amounts owing pursuant to Section 2.17 or 2.18 or to eliminate the illegality referred to in such notice of illegality given pursuant to Section 2.20, (iv) the replacement lender shall purchase, at par, all Loans and other amounts owing to such replaced Lender on or prior to the date of replacement, (v) the Borrower shall be liable to such replaced Lender under Section 2.19 (as though Section 2.19 were applicable) if any Eurodollar Loan owing to such replaced Lender shall be purchased other than on the last day of the Interest Period relating thereto, (vi) the replacement lender, if not already a Lender, shall be reasonably satisfactory to the Administrative Agent and, with respect to the replacement of a Revolving Credit Lender, each Issuing Lender (such consent not to be unreasonably withheld),

(vii) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 10.6 (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein), (viii) the Borrower shall pay all additional amounts (if any) required pursuant to Section 2.17 or 2.18, as the case may be, in respect of any period prior to the date on which such replacement shall be consummated, (ix) such replacement Lender shall consent to the proposed amendment and (x) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, the Administrative Agent or any other Lender shall have against the replaced Lender. Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee, and that the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective.

2.23 Addition of Peso Subfacility. The Borrower has advised the Lenders that, after the Restatement Closing Date, the Borrower and certain of the Revolving Credit Lenders or their Affiliates (in their sole discretion) or other lenders selected by the Borrower and reasonably acceptable to the Administrative Agent (the "Peso Subfacility Lenders") may wish to establish a subfacility (the "Peso Subfacility") whereby up to \$25,000,000 of the Revolving Credit Commitments would be made available by Peso Subfacility Lenders for revolving credit loans denominated and funded in Pesos ("Peso Subfacility Loans"). Accordingly, at any time during the Revolving Credit Commitment Period, the Borrower, the Peso Subfacility Lenders and the Administrative Agent and, in the circumstances contemplated by paragraph (h) below only, all Revolving Credit Lenders (in each case, without the consent of any other party hereto) may enter into amendments (or amendments and restatements), in form and substance reasonably satisfactory to the Administrative Agent, to this Agreement and the other relevant Loan Documents (the "Peso Subfacility Amendments") providing for the following:

(a) The Peso Subfacility Amendments shall provide that each Peso Subfacility Lender shall make available to the Borrower (or to a Subsidiary of the Borrower organized under the laws of Mexico and designated by the Borrower) (any such Mexican Subsidiary or, as the case may be, the Borrower, as the borrower under the Peso Subfacility, the "Peso Subfacility Borrower"), a commitment (for each Peso Subfacility Lender, the "Peso Subfacility Commitment" of such Peso Subfacility Lender) to make Peso Subfacility Loans during the period specified in the Peso Subfacility Amendments (which period shall in any event end not later than the Revolving Credit Termination Date) (the "Peso Subfacility Commitment Period") in an aggregate principal amount for all Peso Subfacility Lenders not exceeding the equivalent in Pesos of \$25,000,000. The Peso Subfacility Amendments shall provide that all Peso Subfacility Loans will be payable no later than the last day of the Peso Subfacility Commitment Period. The Peso Subfacility Amendments shall provide for such interest rate basis or bases, applicable margins, and fees and other pricing terms applicable to the Peso Subfacility and the Peso Subfacility Loans as shall be agreed upon by the parties thereto.

(b) The Peso Subfacility Amendments shall provide that the aggregate amount available under the Revolving Credit Commitments and the Peso Subfacility, plus the amount of any Third-Party Peso Loans, shall not exceed the Total Revolving Credit Commitments.

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(c) In the event that the Peso Subfacility Amendments provide that a Subsidiary of the Borrower shall be the Peso Subfacility Borrower, the Peso Subfacility Amendments may provide that the obligations of the Peso Subfacility Borrower in respect of the Peso Subfacility Loans will be guaranteed by the Borrower and the Guarantors pursuant to the Guarantee and Collateral Agreement and such guarantees will be secured, equally and ratably with all other Obligations, pursuant to all Security Documents, as applicable.

(d) Subject to satisfaction of the conditions set forth in paragraph (h) below, the Peso Subfacility Amendments may provide that, in connection with the Peso Subfacility, the Revolving Credit Lenders will purchase, ratably in accordance with the Revolving Credit Commitments and Peso Subfacility Commitments, participating interests in any such Peso Subfacility Loan, pursuant to participation provisions substantially equivalent to those set forth in Section 3 in respect of participating interests in Letters of Credit, mutatis mutandis.

(e) The Peso Subfacility Amendments may provide for the conversion to Dollars of any amounts owing under the Peso Subfacility under such conditions and pursuant to such conversion mechanisms as shall be set forth in the Peso Subfacility Amendments.

(f) The Peso Subfacility Amendments may provide for amendments of such other provisions of the Loan Documents (including, without limitation, amendments providing for indemnities, exchange rate fluctuation protection, tax gross-up provisions and other provisions in respect of the Peso Subfacility) as the parties thereto shall reasonably determine to be necessary or advisable to accomplish the purpose of establishing the Peso Subfacility and causing the Peso Subfacility to be treated, to the extent practicable and applicable, as a subfacility of the Revolving Credit Facility, benefiting from the protections of the Loan Documents equally and ratably with, and in a manner otherwise equivalent to, the Revolving Credit Facility.

(g) The Peso Subfacility Amendments shall set forth, as conditions precedent to the availability of credit under the Peso Subfacility, the delivery of such corporate records, documents, evidence of corporate approvals, evidence of necessary consents and approvals of Governmental Authorities and legal opinions as the parties thereto shall reasonably determine to be necessary or advisable.

(h) In the event that the Peso Subfacility Amendments provide for Revolving Credit Lenders (other than the Peso Subfacility Lenders) to purchase participating interests in amounts outstanding under the Peso Subfacility, each of the Revolving Credit Lenders shall be a party to, or give its written consent to, the Peso Subfacility Amendments (it being understood that each Revolving Credit Lender, in its sole discretion, may determine to consent or withhold consent to becoming obligated to purchase participating interests in amounts outstanding under the Peso Subfacility).

2.24 **Defaulting Lenders.** Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the unfunded portion of the Revolving Credit Commitment of such Defaulting Lender pursuant to Section 2.7(a);

(b) the Revolving Credit Commitment and Revolving Extensions of Credit of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 10.1); provided, that this clause (b) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender affected thereby;

(c) if any L/C Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the L/C Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Revolving Credit Percentages but only to the extent the sum of all non-Defaulting Lenders' Revolving Extensions of Credit plus such Defaulting Lender's L/C Exposure does not exceed the total of all non-Defaulting Lenders' Revolving Credit Commitments;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall, upon request from any affected Issuing Lender within one Business Day following notice by the Administrative Agent of such request, cash collateralize for the benefit of the Issuing Lender only the Borrower's obligations corresponding to such Defaulting Lender's L/C Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 8.1 for so long as such L/C Exposure is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's L/C Exposure pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 3.3(a) with respect to such Defaulting Lender's L/C Exposure during the period such Defaulting Lender's L/C Exposure is cash collateralized;

(iv) if the L/C Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Section 2.7(a) and Section 3.3(a) shall be adjusted in accordance with such non-Defaulting Lenders' Revolving Credit Percentages; and

(v) if all or any portion of such Defaulting Lender's L/C Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuing Lender or any other Lender hereunder, all fees payable under Section 3.3(a) with respect to such Defaulting Lender's L/C Exposure shall be payable to the Issuing Lender until and to the extent that such L/C Exposure is reallocated and/or cash collateralized; and

(d) so long as such Lender is a Defaulting Lender, the Issuing Lender shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding L/C Exposure will be 100% covered by the Revolving Credit Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.24(c), and participating interests in any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.24(c)(i) (and such Defaulting Lender shall not participate therein).

(e) If (i) a Bankruptcy Event with respect to a Lender Parent of any Lender shall occur following the date hereof and for so long as such event shall continue or (ii) the Issuing Lender has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Issuing Lender shall not be required to issue, amend or increase any Letter of Credit, unless Issuing Lender shall have entered into arrangements with the Borrower or such Lender, satisfactory to the Issuing Lender to defease any risk to it in respect of such Lender hereunder.

(f) In the event that the Administrative Agent, the Borrower and the Issuing Lender each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the L/C Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Credit Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Revolving Credit Percentage.

#### 2.25 Prepayments Below Par.

(a) The Borrower may from time to time notify the Administrative Agent that it desires to make voluntary prepayments of the Term Loans (each, a Special Prepayment) pursuant to the procedures described in this Section 2.25. In connection with any Special Prepayment, the Borrower will notify the Term Loan Lenders through the Administrative Agent (the "Special Prepayment Notice") that the Borrower desires to prepay Term Loans in an aggregate face amount specified by the Borrower (each, a "Special Prepayment Face Amount") at a discount which is either (x) a fixed discount specified by the Borrower (a "Fixed Discount") or (y) a discount expected to be within a range to be specified by the Borrower with respect to such Special Prepayment (any such range, a "Discount Range"), in either case equal to a percentage of par of the principal amount of the Term Loans to be prepaid; provided that (A) if any Revolving Credit Loans are then outstanding, each Special Prepayment shall be funded with the proceeds of an issuance of Capital Stock of, or capital contribution to, the Borrower or proceeds from Indebtedness permitted to be issued under Section 7.2(s), and (B) the Special Prepayment Face Amount of all Term Loans prepaid pursuant to this Section 2.25 shall not exceed \$200,000,000 in the aggregate during the term of this Agreement (the "Aggregate Special Prepayment Face Amount Limit"). The Special Prepayment Face Amount for each Special Prepayment shall not be less than \$30,000,000 or, if less, an amount equal to the Aggregate Special Prepayment Face Amount Limit remaining at such time.



(b) In connection with a Special Prepayment to be at a Fixed Discount, the Borrower will allow each Term Loan Lender to specify the maximum face amount of its Term Loans as to which it is willing to accept such Special Prepayment (subject to customary and reasonable rounding requirements specified by the Administrative Agent and agreed to by the Borrower). The Borrower shall prepay Term Loans (or the respective portions thereof) offered by Lenders that accept such Special Prepayment (“Qualifying Fixed Discount Term Loans”); provided that if the aggregate face amount of such offered Qualifying Fixed Discount Term Loans would exceed the Special Prepayment Face Amount for such Special Prepayment, the Borrower shall prepay such offered Qualifying Fixed Discount Term Loans at the applicable Fixed Discount ratably based on the respective principal amounts of such offered Qualifying Fixed Discount Term Loans (subject to customary and reasonable rounding requirements specified by the Administrative Agent and agreed to by the Borrower).

(c) In connection with a Special Prepayment to be made within a Discount Range, the Borrower will allow each Term Loan Lender to specify a discount to par within such Discount Range at which such Term Loan Lender is willing to accept such Special Prepayment (the “Acceptable Discount” for such Term Loan Lender) for up to a maximum specified face amount of its Term Loans (subject to customary and reasonable rounding requirements specified by the Administrative Agent and agreed to by the Borrower). Based on the Acceptable Discounts and face amounts of Term Loans specified by the applicable Term Loan Lenders, the Borrower will (A) complete the Special Prepayment at the lowest Acceptable Discount for a face amount of Term Loans equal to the lesser of (1) the Special Prepayment Face Amount and (2) the aggregate specified face amount of Term Loans specified by Term Loan Lenders with such lowest Acceptable Discount, (B) in the case of clause (A)(2) above, further complete the Special Prepayment at the lowest unfulfilled (i.e., the next higher) Acceptable Discount for a face amount of Term Loans equal to the lesser of (1) the unfulfilled Special Prepayment Face Amount and (2) the aggregate specified face amount of Term Loans specified by Term Loan Lenders with such next higher Acceptable Discount, and (C) repeat the process in clause (B) above until the Borrower has prepaid the lesser of (1) the entire Special Prepayment Face Amount and (2) the aggregate specified face amount of all Term Loans specified by Term Loan Lenders. In the case of clause (A)(1) or (B)(1) above, if two or more Term Loan Lenders have specified the same Acceptable Discount, the Borrower shall prepay the specified Term Loans at such specified Acceptable Discount ratably between or among such Term Loan Lenders based on the respective face amounts of Term Loans specified by such Term Loan Lenders (subject to customary and reasonable rounding requirements specified by the Administrative Agent and agreed to by the Borrower). It is understood and agreed that the application of such Special Prepayment Funded Amount to such specified Term Loans shall constitute the payment in full of the face amount of such Term Loans.

(d) All Term Loans prepaid by the Borrower pursuant to this Section 2.25 shall be accompanied by payment of accrued and unpaid interest on the par principal amount so prepaid to, but not including, the date of prepayment.

(e) Each Special Prepayment shall be consummated pursuant to procedures (including as to timing of any issuance of a Special Prepayment Notice, response deadlines, rounding and minimum amounts, Type and Interest Periods of accepted Loans and other notices by the Borrower and Lenders and calculation of Special Prepayments and Acceptable Discounts in accordance with Section 2.25(c) above) established by the Borrower in consultation with the Administrative Agent; provided that such procedures shall include (i) a notice period to Term Lenders of at least five Business Days prior to the making of any Special Prepayment and (ii) a period of at least three Business Days for each Term Lender to respond to any requested Special Prepayment.

(f) Each Special Prepayment shall constitute an optional prepayment of Term Loans for all purposes under this Agreement, other than Section 2.9(a). The Borrower hereby specifies that any Special Prepayment Face Amount shall be applied to the installments of the Term Loans of each Lender participating in such Special Prepayment on a ratable basis.

(g) Failure by the Borrower to make any payment to a Lender required by an agreement permitted by this Section 2.25(b) shall not constitute an Event of Default under Section 8.1(a), and the Borrower may revoke any Special Prepayment Notice, or elect not to consummate any Special Prepayment, at any time.

(h) No proceeds of any Revolving Credit Loans may be used to make a Special Prepayment.

**2.26 Increase in Commitments.** (a) The Borrower shall have the right, at any time and from time to time, to obtain additional Term Loans either from one or more of the Term Loan Lenders or other Persons, in an aggregate amount such that the aggregate amount of all outstanding Term Loans at any time shall not exceed \$1,083,600,000; provided that (i) any such request for additional Term Loans shall be in a minimum amount of \$30,000,000, (ii) the Borrower may make a maximum of three such requests, (iii) the Administrative Agent has approved each such new Term Loan Lender, such approval not to be unreasonably withheld or delayed and (iv) the procedures described in Section 2.26(c) have been satisfied.

(b) The Borrower shall have the right at any time and from time to time to increase the Revolving Credit Commitment by obtaining additional Revolving Credit Commitments, either from one or more of the Revolving Credit Lenders or other Persons, in an aggregate amount such that the aggregate amount of Revolving Credit Commitments in effect at any time shall not exceed \$150,000,000; provided that (i) any such request for an increase shall be in a minimum amount of \$15,000,000, (ii) the Borrower may make a maximum of three such requests, (iii) the Administrative Agent has approved each such new Revolving Credit Lender, such approval not to be unreasonably withheld or delayed, and (iv) the procedures described in Section 2.26(c) have been satisfied.

(c) Any amendment hereto for an increase in Term Loan Commitments or Revolving Credit Commitments pursuant to Sections 2.26(a) and (b), respectively, shall be in form and substance reasonably satisfactory to the Administrative Agent and shall only require the written signatures of the Administrative Agent, the Borrower and the Lender(s) being added or increasing their Term Loan Commitment and/or Revolving Credit Commitment. As a

condition precedent to such an increase, (i) the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party signed by an authorized officer of such Loan Party certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, (ii) before and after giving effect to such increase, (x) the representations and warranties contained in Section 4 and the other Loan Documents shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date and (y) no Default or Event of Default shall have occurred and be continuing, (iii) if the total yield (calculated for both the additional Term Loans and the existing Term Loans, including the upfront fees, any interest rate floors and any OID (as defined below but excluding any arrangement, underwriting or similar fee paid by the Borrower)) in respect of any additional Term Loans exceeds the total yield for the existing Term Loans by more than 0.50% (it being understood that any such increase may take the form of original issue discount ("OID"), with OID being equated to the interest rates in a manner determined by the Administrative Agent based on an assumed four-year life to maturity), the Applicable Margin for the existing Term Loans shall be increased so that the difference between the total yield in respect of such additional Term Loans and the corresponding total yield on the existing Term Loans is 0.50% and (iv) if requested by the Administrative Agent, the Borrower shall deliver to the Administrative Agent customary legal opinions, in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

2.27 Future Extensions. Upon the request of the Borrower, any Lender may agree to extend the maturity date applicable to its Term Loan or Revolving Credit Commitment to a date after the then applicable maturity date (with respect to Term Loans) or the then applicable commitment termination date (with respect to Revolving Credit Commitments) and such extensions shall only require the consent of the Borrower, such Lender and the Administrative Agent (in each case, such consent shall not be unreasonably withheld or delayed); provided, however, that (i) any such request for extension shall be in a minimum amount of \$100,000,000 and (ii) such request and the opportunity to further extend its Term Loan or Revolving Credit Commitment shall be made available to each Term Loan Lender and/or Revolving Credit Lender, as appropriate under the circumstances.

### SECTION 3. LETTERS OF CREDIT

3.1 L/C Commitment. (a) Subject to the terms and conditions hereof, each Issuing Lender, in reliance on the agreements of the other Revolving Credit Lenders set forth in Section 3.4(a), agrees to issue letters of credit (the letters of credit issued on and after the Restatement Closing Date pursuant to this Section 3, together with all Existing Letters of Credit, the "Letters of Credit") for the account of the Borrower on any Business Day during the Revolving Credit Commitment Period in such form as may be approved from time to time by such Issuing Lender; provided, that no Issuing Lender shall issue any Letter of Credit if, after giving effect to such issuance, (i) the L/C Obligations would exceed the L/C Commitment or (ii) the aggregate amount of the Available Revolving Credit Commitments would be less than zero. Each Letter of Credit shall (i) be denominated in Dollars and (ii) expire no later than the earlier of (x) the first anniversary of its date of issuance and (y) the date which is five Business Days prior to the Revolving Credit Termination Date; provided that any Letter of Credit with a

one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (y) above). All Existing Letters of Credit shall be deemed to have been issued pursuant hereto and from and after the Restatement Closing Date shall be subject to and governed by the terms and conditions hereof and shall constitute "Letters of Credit" for all purposes of this Agreement.

(b) No Issuing Lender shall at any time be obligated to issue any Letter of Credit hereunder if such issuance would conflict with, or cause such Issuing Lender or any L/C Participant to exceed any limits imposed by, any applicable Requirement of Law.

3.2 Procedure for Issuance of Letter of Credit. The Borrower may from time to time request that an Issuing Lender issue a Letter of Credit by delivering to such Issuing Lender at its address for notices specified herein an Application therefor, with a copy to the Administrative Agent, completed to the satisfaction of such Issuing Lender, and such other certificates, documents and other papers and information as such Issuing Lender may request. Upon receipt of any Application, an Issuing Lender will process such Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall promptly issue the Letter of Credit requested thereby by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed to by such Issuing Lender and the Borrower (but in no event shall any Issuing Lender be required to issue any Letter of Credit earlier than three Business Days after its receipt of the Application therefor and all such other certificates, documents and other papers and information relating thereto). Promptly after issuance by an Issuing Lender of a Letter of Credit, such Issuing Lender shall furnish a copy of such Letter of Credit to the Borrower. Each Issuing Lender shall promptly give notice to the Administrative Agent of the issuance of each Letter of Credit issued by such Issuing Lender (including the amount thereof). Upon the written request of any Revolving Credit Lender, the Administrative Agent will, within three Business Days of such request, inform such Revolving Credit Lender of the aggregate drawable amount of all Letters of Credit outstanding on the date of such request.

3.3 Fees and Other Charges. (a) The Borrower will pay a fee on the aggregate drawable amount of all outstanding Letters of Credit at a per annum rate equal to the Applicable Margin then in effect with respect to Eurodollar Loans under the Revolving Credit Facility, shared ratably among the Revolving Credit Lenders in accordance with their respective Revolving Credit Percentages and payable quarterly in arrears on each L/C Fee Payment Date after the issuance date of such Letters of Credit. In addition, the Borrower shall pay to the relevant Issuing Lender for its own account a fronting fee on the aggregate drawable amount of all outstanding Letters of Credit issued by it at a rate per annum to be agreed upon by such Issuing Lender and the Borrower, payable quarterly in arrears on each L/C Fee Payment Date after the issuance date.

(b) In addition to the foregoing fees, the Borrower shall pay or reimburse each Issuing Lender for such normal and customary costs and expenses as are incurred or charged by such Issuing Lender in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit.

3.4 L/C Participations. (a) Each Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce each Issuing Lender to issue Letters of Credit hereunder, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from each Issuing Lender, on the terms and conditions hereinafter stated, for such L/C Participant's own account and risk, an undivided interest equal to such L/C Participant's Revolving Credit Percentage in each Issuing Lender's obligations and rights under each Letter of Credit issued by such Issuing Lender hereunder and the amount of each draft paid by such Issuing Lender thereunder. Each L/C Participant unconditionally and irrevocably agrees with each Issuing Lender that, if a draft is paid under any Letter of Credit issued by such Issuing Lender for which such Issuing Lender is not reimbursed in full by the Borrower in accordance with the terms of this Agreement (or in the event that any reimbursement received by the Issuing Lender shall be required to be returned by it at any time), such L/C Participant shall pay to such Issuing Lender upon demand at such Issuing Lender's address for notices specified herein an amount equal to such L/C Participant's Revolving Credit Percentage of the amount of such draft, or any part thereof, that is not so reimbursed (or is so returned). Each L/C Participant's obligation to pay such amount shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such L/C Participant may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other L/C Participant or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(b) If any amount required to be paid by any L/C Participant to an Issuing Lender pursuant to Section 3.4(a) in respect of any unreimbursed portion of any payment made by such Issuing Lender under any Letter of Credit is paid to such Issuing Lender within three Business Days after the date such payment is due, such L/C Participant shall pay to such Issuing Lender on demand an amount equal to the product of (i) such amount, times (ii) the daily average Federal Funds Effective Rate during the period from and including the date such payment is required to the date on which such payment is immediately available to such Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. If any such amount required to be paid by any L/C Participant pursuant to Section 3.4(a) is not made available to such Issuing Lender by such L/C Participant within three Business Days after the date such payment is due, such Issuing Lender shall be entitled to recover from such L/C Participant, on demand, such amount with interest thereon calculated from such due date at the rate per annum applicable to Base Rate Loans under the Revolving Credit Facility. A certificate of such Issuing Lender submitted to any L/C Participant with respect to any such amounts owing under this Section shall be conclusive in the absence of manifest error.

(c) Whenever, at any time after an Issuing Lender has made payment under any Letter of Credit and has received from any L/C Participant its pro rata share of such payment in accordance with Section 3.4(a), such Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Borrower or otherwise, including proceeds of Collateral applied thereto by such Issuing Lender), or any payment of interest on account thereof,

such Issuing Lender will distribute to such L/C Participant its pro rata share thereof; provided, however, that in the event that any such payment received by such Issuing Lender shall be required to be returned by such Issuing Lender, such L/C Participant shall return to such Issuing Lender the portion thereof previously distributed by such Issuing Lender to it.

3.5 Reimbursement Obligation of the Borrower. The Borrower agrees to reimburse each Issuing Lender, on each date on which such Issuing Lender notifies the Borrower of the date and amount of a draft presented under any Letter of Credit and paid by such Issuing Lender, for the amount of (a) such draft so paid and (b) any taxes, fees, charges or other costs or expenses incurred by such Issuing Lender in connection with such payment (the amounts described in the foregoing clauses (a) and (b) in respect of any drawing, collectively, the "Payment Amount"). Each such payment by the Borrower of the Payment Amount shall be made to such Issuing Lender at its address for notices specified herein in lawful money of the United States of America and in immediately available funds. Interest shall be payable on each Payment Amount from the date of the applicable drawing until payment in full at the rate set forth in (i) until the second Business Day following the date of the applicable drawing, Section 2.13(b) and (ii) thereafter, Section 2.13(c). Each drawing under any Letter of Credit shall (unless an event of the type described in clause (i) or (ii) of Section 8.1(f) shall have occurred and be continuing with respect to the Borrower, in which case the procedures specified in Section 3.4 for funding by L/C Participants shall apply) constitute a request by the Borrower to the Administrative Agent for a borrowing pursuant to Section 2.5 of Revolving Credit Loans as Base Rate Loans in the amount of such drawing. The Borrowing Date with respect to such borrowing shall be the first date on which a borrowing of Revolving Credit Loans could be made, pursuant to Section 2.5, if the Administrative Agent had received a notice of such borrowing at the time the Administrative Agent receives notice from the relevant Issuing Lender of such drawing under such Letter of Credit.

3.6 Obligations Absolute. The Borrower's obligations under this Section 3 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower may have or have had against any Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with each Issuing Lender that such Issuing Lender shall not be responsible for, and the Borrower's Reimbursement Obligations under Section 3.5 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. No Issuing Lender shall be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Issuing Lender. The Borrower agrees that any action taken or omitted by an Issuing Lender under or in connection with any Letter of Credit issued by it or the related drafts or documents, if done in the absence of gross negligence or willful misconduct and in accordance with the standards or care specified in the Uniform Commercial Code of the State of New York, shall be binding on the Borrower and shall not result in any liability of such Issuing Lender to the Borrower.

3.7 Letter of Credit Payments. If any draft shall be presented for payment under any Letter of Credit, the relevant Issuing Lender shall promptly notify the Borrower of the date and amount thereof. The responsibility of the relevant Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit, in addition to any payment obligation expressly provided for in such Letter of Credit issued by such Issuing Lender, shall be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment appear on their face to be in conformity with such Letter of Credit.

3.8 Applications. To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Agreement or the Guarantee and Collateral Agreement, the provisions of this Agreement or the Guarantee and Collateral Agreement, as applicable, shall apply.

#### SECTION 4. REPRESENTATIONS AND WARRANTIES

To induce the Agents and the Lenders to enter into this Agreement and to make the Loans and issue or participate in the Letters of Credit, the Parent and the Borrower hereby jointly and severally represent and warrant to each Agent and each Lender that:

4.1 Financial Condition. (a) The audited consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at December 31, 2011 and the related consolidated statement of income and of cash flows for the fiscal year ended on such date, reported on by and accompanied by an unqualified report from Deloitte & Touche LLP, present fairly in all material respects the consolidated financial condition of the Borrower and its consolidated Subsidiaries as at such date, and the consolidated results of its operations and its consolidated cash flows for the fiscal year then ended.

(b) The financial statements referred to in paragraph (a), including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently to each consolidated group throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein). The Parent, the Borrower and its Restricted Subsidiaries do not have any material Guarantee Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including, without limitation, any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are required to be but are not reflected in the financial statements referred to in paragraph (a). During the period from December 31, 2011 to and including the date hereof, there has been no Disposition by the Borrower or any of its Subsidiaries of any material part of its business or Property.

4.2 No Change. Since December 31, 2011 there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

4.3 Corporate Existence; Compliance with Law. Each of the Parent, the Borrower and its Restricted Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the corporate power and authority, and the legal right, to own and operate its Property, to lease the Property it operates as

lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation and in good standing under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification except to the extent that the failure to do so could not, in the aggregate, reasonably be expected to have a Material Adverse Effect and (d) is in compliance with all Requirements of Law except to the extent that the failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.4 Corporate Power; Authorization; Enforceable Obligations. Each Loan Party has the corporate power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party, to consummate the Transactions (to the extent applicable) and, in the case of the Borrower, to borrow hereunder. Each Loan Party has taken all necessary corporate or other action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the borrowings on the terms and conditions of this Agreement. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person (each, a "Filing") is required in connection with the borrowings hereunder or the execution, delivery, performance, validity or enforceability of this Agreement or any of the other Loan Documents, except (i) Filings described in Schedule 4.4, which Filings have been obtained or made and are in full force and effect, (ii) the Filings referred to in Section 4.19 and any other Filing contemplated by this Agreement or any other Loan Document and (iii) any antitrust Filings required to be made to foreclose on the Collateral. Each Loan Document has been duly executed and delivered on behalf of each Loan Party that is a party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party that is a party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

4.5 No Legal Bar. The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the borrowings hereunder and the use of the proceeds thereof will not violate any Requirement of Law or any material Contractual Obligation of the Parent, the Borrower or any of its Restricted Subsidiaries and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such Contractual Obligation (other than the Liens created by the Security Documents). No Requirement of Law or Contractual Obligation applicable to the Borrower or any of its Subsidiaries could reasonably be expected to have a Material Adverse Effect.

4.6 No Material Litigation. Except as set forth on Schedule 4.6, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Parent or the Borrower, threatened by or against the Parent, the Borrower or any of its Subsidiaries or against any of their respective properties or revenues (a) with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby, or (b) that could reasonably be expected to have a Material Adverse Effect.



4.7 No Default. Neither the Parent, the Borrower nor any of its Subsidiaries is in default under or with respect to any of its Contractual Obligations in any respect that could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

4.8 Ownership of Property; Liens. Each of the Parent, the Borrower and its Restricted Subsidiaries has title in fee simple to, or a valid leasehold interest in, all its real property, and good title to, or a valid leasehold interest in, all its other Property except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and none of such Property is subject to any Lien except as permitted by Section 7.3.

4.9 Intellectual Property. The Parent, the Borrower and each of its Restricted Subsidiaries owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted in all material respects. No material claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property, nor does the Parent or the Borrower know of any valid basis for any such claim, other than any such claim that could not reasonably be expected to have a Material Adverse Effect. Except as would not have a Material Adverse Effect, the use of Intellectual Property by the Parent, the Borrower and its Restricted Subsidiaries does not infringe on the rights of any Person.

4.10 Taxes. Each of the Parent, the Borrower and each of its Restricted Subsidiaries has filed or caused to be filed all Federal and other material tax returns that are required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its Property and all other taxes, fees or other charges imposed on it or any of its Property by any Governmental Authority, in each case prior to delinquency (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the Parent, the Borrower or its Restricted Subsidiaries, as the case may be); and no tax Lien has been filed, and, to the knowledge of the Parent and the Borrower, no claim is being asserted, with respect to any such tax, fee or other charge.

4.11 Federal Regulations. No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used (a) for “purchasing” or “carrying” any “margin stock” within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect for any purpose that violates the provisions of the Regulations of the Board or (b) for any purpose that violates the provisions of the Regulations of the Board. No more than 25% of the assets of the Parent, the Borrower and each of its Restricted Subsidiaries consists of “margin stock” as so defined. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1 referred to in Regulation U.

4.12 Labor Matters. There are no strikes or other labor disputes against the Parent, the Borrower or any of its Domestic Subsidiaries pending or, to the knowledge of the Parent or the Borrower, threatened that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. Hours worked by and payments made to employees of the Parent, the Borrower and its Domestic Subsidiaries have not been in violation of the Fair Labor Standards Act (to the extent applicable) or any other applicable Requirement of Law dealing with such matters that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. All payments due from the Parent, the Borrower or any of its Restricted Subsidiaries on account of employee health and welfare insurance that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect, if not paid, have been paid or accrued as a liability on the books of the Parent, the Borrower or the relevant Restricted Subsidiary.

4.13 ERISA. Except as set forth on Schedule 4.13, neither a material Reportable Event nor a failure by the Borrower or any Commonly Controlled Entity to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or the failure by any Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, whether or not waived has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any Plan, and each Plan has complied in all material respects with the applicable provisions of ERISA and the Code. No termination of a Single Employer Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period. The present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits by a material amount. Neither the Borrower nor any Commonly Controlled Entity has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or could reasonably be expected to result in a material liability under ERISA, and neither the Borrower nor any Commonly Controlled Entity would become subject to any material liability under ERISA if the Borrower or any such Commonly Controlled Entity were to withdraw completely from all Multiemployer Plans as of the valuation date most closely preceding the date on which this representation is made or deemed made. No Multiemployer Plan is, or is expected to be, in Reorganization, Insolvent, or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA) that has resulted or could reasonably be expected to result in a material liability to the Borrower or any Commonly Controlled Entity.

4.14 Investment Company Act; Other Regulations. No Loan Party is an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended. No Loan Party is subject to regulation under any Requirement of Law which limits its ability to incur Indebtedness.

4.15 Subsidiaries. (a) The Subsidiaries listed on Schedule 4.15(a) constitute all the Subsidiaries of the Borrower as of the Restatement Closing Date. Schedule 4.15(a) sets forth as of the Restatement Closing Date the name and jurisdiction of organization of each Subsidiary and, as to each Subsidiary, the percentage of each class of Capital Stock owned by each Loan Party and whether such Subsidiary is a Class I Restricted Subsidiary, Class II Restricted Subsidiary or an Unrestricted Subsidiary and, in the case of each Class I Restricted Subsidiary, whether such Subsidiary is a Wholly Owned Subsidiary and a Subsidiary Guarantor.

(b) There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock of the Parent, the Borrower or any Subsidiary, except as disclosed on Schedule 4.15(b) or with respect to such Capital Stock owned by third parties.

4.16 Use of Proceeds. The proceeds of the Term Loans shall be used (i) to refinance certain existing indebtedness of the Borrower, (ii) for general corporate purposes and (iii) to pay fees and expenses related to any of the foregoing. The proceeds of the Revolving Credit Loans and the Letters of Credit shall be used for general corporate purposes.

4.17 Environmental Matters. Other than exceptions to any of the following that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) The Borrower and its Subsidiaries: (i) are, and within the period of all applicable statutes of limitation have been, in compliance with all applicable Environmental Laws; (ii) hold all Environmental Permits (each of which is in full force and effect) required for any of their current operations at any property owned, leased, or otherwise operated by any of them; and (iii) are, and within the period of all applicable statutes of limitation have been, in compliance with all of their Environmental Permits.

(b) Materials of Environmental Concern are not present at, on, under, in, or about any real property now or formerly owned, leased or operated by the Borrower or any of its Subsidiaries, or at any other location (including, without limitation, any location to which the Borrower or any of its Subsidiaries has sent Materials of Environmental Concern for re-use or recycling or for treatment, storage, or disposal) which could reasonably be expected to (i) give rise to liability of the Borrower or any of its Subsidiaries under any applicable Environmental Law, or (ii) interfere with the Borrower's or any of its Subsidiaries' continued operations, or (iii) impair the fair saleable value of any real property owned or leased by the Borrower or any of its Subsidiaries.

(c) There is no judicial, administrative, or arbitral proceeding (including any notice of violation or alleged violation) under or relating to any Environmental Law to which the Borrower or any of its Subsidiaries is, or to the knowledge of the Borrower or any of its Subsidiaries will be, named as a party.

(d) Neither the Borrower nor any of its Subsidiaries has received any written request for information, or been notified that it is a potentially responsible party under or relating to the federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law, or with respect to any Materials of Environmental Concern.

(e) Neither the Borrower nor any of its Subsidiaries has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with or liability under any Environmental Law.

(f) Neither the Borrower nor any of its Subsidiaries has contractually, or by operation of law, assumed any liabilities of another Person under any Environmental Law or with respect to any Material of Environmental Concern.

4.18 Accuracy of Information, etc. No statement or information contained in this Agreement, any other Loan Document, the Confidential Information Memorandum or any other document, certificate or statement furnished to the Administrative Agent or the Lenders or any of them, by or on behalf of any Loan Party for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished (or, in the case of the Confidential Information Memorandum, as of the date of this Agreement), any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein not misleading. The projections and pro forma financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. There is no fact known to any Loan Party that could reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents, in the Confidential Information Memorandum or in any other documents, certificates and statements furnished to the Agents and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

4.19 Security Documents. (a) The Guarantee and Collateral Agreement, together with the Reaffirmation Agreement, are effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein. In the case of the Pledged Stock, stock certificates representing such Pledged Stock have been delivered to the Administrative Agent (together with a properly completed and signed stock power or endorsement), and in the case of the other Collateral described in the Guarantee and Collateral Agreement, financing statements in appropriate form have been filed in the offices specified on Schedule 4.19(a) as of the Restatement Closing Date and such other filings as are specified on Schedule 2 to the Guarantee and Collateral Agreement have been completed and the Liens created under the Guarantee and Collateral Agreement and the Reaffirmation Agreement constitute fully perfected Liens in all right, title and interest of the Loan Parties in such Collateral, as security for the Obligations (as defined in the Guarantee and Collateral Agreement), in each case prior and superior in right to any other Person (except Liens permitted by Section 7.3(a), (m), (s) and (u) and, in the case of Collateral other than Pledged Stock, other Liens permitted by Section 7.3).

(b) Each of the Mortgages existing as of the date hereof, when amended by the mortgage amendment referred to in Section 6.13 (the Mortgage Amendments) will be effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds

thereof; and when (i) the Mortgage Amendments are filed in the offices specified on Schedule 4.19(b) (in the case of the Mortgages existing as of the Restatement Closing Date) and (ii) the Mortgages which are to be executed and delivered pursuant to Section 6.9(b) are filed in the recording office designated by the Borrower, such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties described therein and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person (other than Persons holding Liens or other encumbrances or rights permitted by the relevant Mortgage).

4.20 Solvency. Each Loan Party is, and after giving effect to the Transactions and the incurrence of all Indebtedness and obligations being incurred in connection herewith will be Solvent.

4.21 Senior Indebtedness. The Obligations constitute "Designated Senior Indebtedness" of the Borrower under and as defined in the Senior Subordinated Note Indenture. In furtherance thereof, and for avoidance of doubt, the Borrower hereby designates all "Indebtedness" (as defined in the Senior Subordinated Note Indenture in existence on the date hereof) under this Agreement as "Designated Senior Indebtedness" for purposes of the Senior Subordinated Note Indenture.

4.22 Regulation H. No Mortgage encumbers improved real property which is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (except any Mortgaged Properties as to which such flood insurance as required by Regulation H has been obtained and is in full force and effect as required by this Agreement).

#### SECTION 5. CONDITIONS PRECEDENT

5.1 Conditions to Initial Extension of Credit. The agreement of each Lender to make the initial extension of credit requested to be made by it hereunder is subject to the satisfaction, prior to or concurrently with the making of such extension of credit on the Restatement Closing Date, of the following conditions precedent:

(a) Loan Documents. The Administrative Agent shall have received (i) this Agreement, executed and delivered by a duly authorized officer of the Parent and the Borrower, (ii) a cashless roll letter agreement executed and delivered by each Lender designated by the Administrative Agent and accepted by the Borrower and (iii) a Reaffirmation Agreement, executed and delivered by a duly authorized officer of the Parent, the Borrower and each Subsidiary Guarantor.

(b) Existing Term Loans. All Existing Term Loans outstanding under the Existing Credit Agreement shall have been (i) repaid in full or (ii) converted into Term Loans hereunder (and in any event, all accrued interest thereon shall have been paid).

(c) Financial Statements. The Administrative Agent shall have received (i) audited consolidated financial statements of the Borrower and its consolidated Subsidiaries for the 2011 Fiscal Year and (ii) unaudited interim consolidated financial

statements of the Borrower and its consolidated Subsidiaries, in each case, to the extent available, for each quarterly period ended after the 2011 Fiscal Year. All such financial statements shall have been prepared in accordance with GAAP consistently applied to each consolidated group throughout the applicable period.

(d) Fees. The Lenders and the Administrative Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented supported by customary documentation (including reasonable fees, disbursements and other charges of counsel to the Agents), on or before the Restatement Closing Date. All such amounts will be paid with proceeds of Loans made on the Restatement Closing Date and will be reflected in the funding instructions given by the Borrower to the Administrative Agent on or before the Restatement Closing Date.

(e) Solvency Certificate. The Lenders shall have received a reasonably satisfactory solvency certificate of the chief financial officer of the Borrower which shall certify as to the solvency of the Borrower and its Subsidiaries considered as a whole after giving effect to the Transactions and the financing contemplated hereby.

(f) Lien Searches. The Administrative Agent shall have received the results of a recent lien search in each of the jurisdictions in which Uniform Commercial Code financing statement or other filings or recordings should be made to evidence or perfect security interests in all assets of the Loan Parties, and such search shall reveal no liens on any of the assets of the Loan Party, except for Liens permitted by Section 7.3.

(g) Closing Certificate; Certified Certificate of Incorporation; Good Standing The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Restatement Closing Date, substantially in the form of Exhibit C, with appropriate insertions and attachments including the certificate of incorporation of each Loan Party that is a corporation certified by the relevant authority of the jurisdiction of organization of such Loan Party, and (ii) a long form good standing certificate and bringdown good standings for each Loan Party from its jurisdiction of organization.

(h) Legal Opinions. The Administrative Agent shall have received the legal opinion of Akin, Gump, Strauss, Hauer & Feld, L.L.P., counsel to the Loan Parties, substantially in the form of Exhibit F-1. Such legal opinion shall cover such other matters incident to the transactions contemplated by this Agreement as the Administrative Agent may reasonably require.

(i) Pledged Stock; Stock Powers; Acknowledgment and Consent; Pledged Notes The Administrative Agent shall have received (i) to the extent not previously delivered, the certificates representing the shares of Capital Stock pledged pursuant to the Guarantee and Collateral Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof, (ii) an Acknowledgment and Consent, substantially in the form of Annex II to the Guarantee and Collateral Agreement, duly executed by any issuer of Capital Stock pledged pursuant to the Guarantee and Collateral Agreement that is not itself a party to the Guarantee and Collateral Agreement and (iii) to the extent not previously delivered, each promissory note pledged pursuant to the Guarantee and Collateral Agreement endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank satisfactory to the Administrative Agent) by the pledgor thereof.

(j) Filings, Registrations and Recordings. Each document (including, without limitation, any Uniform Commercial Code financing statement) required by the Security Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens permitted by Section 7.3), shall have been filed, registered or recorded or shall have been delivered to the Administrative Agent and be in proper form for filing, registration or recordation.

(k) Flood Hazard Determinations. The Administrative Agent shall have received a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property existing on the date hereof (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and each Loan Party relating thereto) and if any such Mortgaged Property is located in a special flood hazard area, evidence of flood insurance in form and amount reasonably satisfactory to the Administrative Agent.

(l) Insurance. The Administrative Agent shall have received insurance certificates satisfying the requirements of Section 5.3 of the Guarantee and Collateral Agreement.

(m) PATRIOT Act. The Lenders shall have received, sufficiently in advance of closing, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the United States PATRIOT Act.

(n) Material Adverse Effect. Since December 31, 2011, there shall not have occurred or become known to the Lenders any Material Adverse Effect.

5.2 Conditions to Each Extension of Credit. The agreement of each Lender to make any extension of credit requested to be made by it hereunder on any date (including, without limitation, its initial extension of credit) is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents (other than, in the case of any extension of credit made on the Restatement Closing Date, Section 4.2) shall be true and correct in all material respects on and as of such date as if made on and as of such date (except that any representation or warranty which by its terms is made as of an earlier date shall be true and correct in all material respects as of such earlier date).

(b) No Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the extensions of credit requested to be made on such date.

Each borrowing by and issuance of a Letter of Credit on behalf of the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such extension of credit that the conditions contained in this Section 5.2 have been satisfied.

#### SECTION 6. AFFIRMATIVE COVENANTS

The Parent and the Borrower hereby jointly and severally agree that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding or any Loan or other amount is owing to any Lender or any Agent hereunder, each of the Parent and the Borrower shall and shall cause each of its Class I Restricted Subsidiaries (and, with respect to Section 6.12, Class II Restricted Subsidiaries and Unrestricted Subsidiaries) to:

6.1 Financial Statements. Furnish to each Agent (to promptly be made available to each Lender):

(a)(i) as soon as available, but in any event within 90 days after the end of each Fiscal Year, a copy of the audited consolidated balance sheet of the Parent and its consolidated Subsidiaries as at the end of such year and the related audited consolidated statements of income and of cash flows for such year, setting forth in each case in comparative form the figures as of the end of and for the previous year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by Deloitte & Touche LLP or other independent certified public accountants of nationally recognized standing; and

(ii) as soon as available, but in any event within 90 days after the end of each Fiscal Year, a copy of the unaudited consolidated balance sheet of the Borrower and its consolidated Restricted Subsidiaries as at the end of such year and the related unaudited consolidated statements of income and of cash flows for such year, setting forth in each case in comparative form the figures for the previous year; and

(b) as soon as available, but in any event not later than 45 days after the end of each of the first three quarterly periods of each Fiscal Year, (i) unaudited consolidated balance sheets of the Parent and its consolidated Subsidiaries and (ii) the unaudited consolidated balance sheet of the Borrower and its consolidated Restricted Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures as of the end of and for the corresponding period in the previous year, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments and the absence of footnotes);

all such financial statements to present fairly in all material respects the financial position of the Borrower and its consolidated Restricted Subsidiaries or the Parent and its consolidated Subsidiaries, as the case may be, and, in each case, to be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such accountants or officer, as the case may be, and disclosed therein).



6.2 Certificates; Other Information. Furnish to each Agent, or, in the case of clause (h), to the relevant Lender:

(a) concurrently with the delivery of the financial statements referred to in Section 6.1(a)(i), a certificate of the independent certified public accountants reporting on such financial statements stating that in making the examination necessary therefor no knowledge was obtained of any Default or Event of Default, except as specified in such certificate (it being understood that such certificate shall be limited to the items that independent certified public accountants are permitted to cover in such certificates pursuant to their professional standards and customs of the profession);

(b) concurrently with the delivery of any financial statements pursuant to Section 6.1, (i) a certificate of a Responsible Officer (A) stating that, to the best of such Responsible Officer's knowledge, each Loan Party during such period has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in this Agreement and the other Loan Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and (B) certifying as to any change in designation of any Unrestricted Subsidiaries and (ii) in the case of quarterly or annual financial statements, (x) a Compliance Certificate containing all information and calculations necessary for determining compliance by the Parent, the Borrower and its Subsidiaries with the provisions of this Agreement referred to therein as of the last day of the fiscal quarter or Fiscal Year, as the case may be, (y) to the extent not previously disclosed to the Administrative Agent, a listing of any Intellectual Property acquired by any Loan Party since the date of the most recent list delivered pursuant to this clause (y) (or, in the case of the first such list so delivered, since the Restatement Closing Date) and (z) any UCC financing statements or other filings specified in such Compliance Certificate as being required to be delivered therewith;

(c) as soon as available, and in any event no later than 90 days after the end of each Fiscal Year, a detailed consolidated budget for the following fiscal year (including a projected consolidated balance sheet of the Borrower and its Restricted Subsidiaries as of the end of the following fiscal year, and the related consolidated statements of projected cash flow, projected changes in financial position and projected income thereto), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such fiscal year (collectively, the "Projections"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect;

(d) within 45 days after the end of each of the first three fiscal quarters, and within 90 days after the end of each Fiscal Year, of the Borrower, a narrative discussion and analysis of the financial condition and results of operations of the Parent and its consolidated Subsidiaries for such fiscal quarter and for the period from the beginning of the then current fiscal year to the end of such fiscal quarter, as compared to the comparable periods of the previous year;

(e) no later than five Business Days prior to the effectiveness thereof, copies of substantially final drafts of any proposed amendment, supplement, waiver or other modification with respect to any Senior Note Indenture or Senior Subordinated Note Indenture;

(f) within five days after the same are sent, copies of all financial statements and reports that the Parent or the Borrower sends to the holders of any class of its debt securities or public equity securities generally and, within five days after the same are filed, copies of all financial statements and reports that the Parent or the Borrower may make to, or file with, the SEC;

(g) as soon as possible and in any event within 20 days of obtaining knowledge thereof: (i) written notice of any development, event, or condition that, individually or in the aggregate with other developments, events or conditions, could reasonably be expected to result in the payment by the Borrower and its Class I Restricted Subsidiaries, in the aggregate, of a Material Environmental Amount; and (ii) any written notice that any Governmental Authority may deny any application for a material Environmental Permit sought by, or revoke or refuse to renew any material Environmental Permit held by, the Borrower; and

(h) promptly, such additional financial and other information as any Lender (requesting through the Administrative Agent) may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.1 or 6.2 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (A) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website; or (B) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that (1) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender, and (2) the Borrower shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.2(b) to the Administrative Agent. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and, in any event, shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

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6.3 Payment of Obligations. Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the Parent, the Borrower or its Class I Restricted Subsidiaries, as the case may be.

6.4 Conduct of Business and Maintenance of Existence; Compliance (a) (i) Preserve, renew and keep in full force and effect its corporate or other existence and (ii) take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business, except, in each case, as otherwise permitted by Section 7.4 and except, in the case of clause (ii) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (b) comply with all Contractual Obligations and Requirements of Law, except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.5 Maintenance of Property; Insurance. (a) Keep all Property and systems useful and necessary in its business in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies insurance on all its Property in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as the Borrower deems adequate for its business. Additional covenants regarding insurance coverage are set forth in the Mortgages and in Section 5.3 of the Guarantee and Collateral Agreement.

6.6 Inspection of Property; Books and Records; Discussions (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) upon prior notice, permit representatives of the Administrative Agent (and after the occurrence and during the continuance of an Event of Default, representatives of any Lender (in coordination with the Administrative Agent)) to visit and inspect any of its properties and examine and make abstracts from any of its books and records at any reasonable time during normal business hours and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Parent, the Borrower and its Class I Restricted Subsidiaries with officers of the Parent, the Borrower and its Class I Restricted Subsidiaries and with its independent certified public accountants.

6.7 Notices. Promptly give notice to the Administrative Agent of:

(a) the occurrence of any Default or Event of Default;

(b) any (i) default or event of default under any Contractual Obligation of the Parent, the Borrower or any of its Subsidiaries or (ii) litigation, investigation or proceeding which may exist at any time between the Parent, the Borrower or any of its Subsidiaries and any Governmental Authority, that in either case, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect;

(c) any litigation or proceeding affecting the Parent, the Borrower or any of its Restricted Subsidiaries in which the amount involved is \$10,000,000 or more and not covered by insurance or in which injunctive or similar relief is sought;

(d) the following events, as soon as possible and in any event within 30 days after the Borrower knows or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a failure to make any required contribution to a Plan, the creation of any Lien in favor of the PBGC or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC or the Borrower or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any Plan; and

(e) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the Parent, the Borrower or the relevant Subsidiary proposes to take with respect thereto.

6.8 Environmental Laws. (a) Comply with, and use commercially reasonable efforts to cause compliance by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain and comply with and maintain, and use commercially reasonable efforts to cause all tenants and subtenants to obtain and comply with and maintain, any and all required Environmental Permits. Any noncompliance with this Section 6.8(a) shall be deemed not to constitute a breach of this covenant provided that, upon learning of any actual or suspected noncompliance, the Borrower shall promptly undertake all reasonable efforts to achieve compliance, and provided further that, in any case, such non-compliance, and any other noncompliance with Environmental Laws, individually or in the aggregate, could not reasonably be expected to give rise to a Material Adverse Effect.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply with all orders and directives of all Governmental Authorities regarding Environmental Laws; provided, however, that the Loan Parties shall be deemed not to be in violation of this covenant if a Loan Party promptly challenges in good faith any such order or directive of any Governmental Authorities in a manner consistent with all applicable Environmental Laws and pursues such challenge or challenges diligently, and the pendency of such challenges, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

6.9 Additional Collateral, etc. (a) With respect to any Property acquired after the Restatement Closing Date by the Parent, the Borrower or any Subsidiary Guarantor (other than (u) personal property as to which the Administrative Agent, for the benefit of the Secured Parties, is not required to have a perfected security interest pursuant to the Guarantee and Collateral Agreement, (v) the Capital Stock of any Unrestricted Subsidiary organized under the laws of any jurisdiction outside the United States, (w) any Property described in paragraph (c) or

(d) of this Section, (x) any interest in real property, (y) any foreign intellectual property and (z) any Property subject to a Lien permitted by Section 7.3(g), (k) or (m)) as to which the Administrative Agent, for the benefit of the Secured Parties, does not have a perfected Lien to the extent required pursuant to the Guarantee and Collateral Agreement, promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a security interest in such Property and (ii) take all actions necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority (subject to Liens permitted by the Guarantee and Collateral Agreement) security interest in such Property, including without limitation, the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be reasonably requested by the Administrative Agent.

(b) With respect to (i) any fee interest in any real property having a value (together with improvements thereof) of at least \$4,000,000 (valued in accordance with Schedule 6.9(b)-1; such valuation to be reasonably satisfactory to the Administrative Agent) acquired after the Restatement Closing Date by the Parent, the Borrower or any Subsidiary Guarantor (which, for purposes of this paragraph, shall include any such property owned or leased by an entity at the time such entity becomes a Subsidiary Guarantor) or (ii) any leasehold interest in any real property contemplating an initial annual rent payment, including projected percentage rent during such initial year, after the expiration of any free rent or "rent abatement" period, of at least \$550,000 acquired or leased after the Restatement Closing Date by the Parent, the Borrower or any Subsidiary Guarantor (in each case other than any such real property subject to a Lien expressly permitted by Section 7.3(g), (k) or (m)), if, at the time of such acquisition or lease commencement, the aggregate value of all leasehold and fee-owned real property of the Borrower and the Subsidiary Guarantors subject to a Mortgage (valued in accordance with Schedule 6.9(b)-1; such value to be demonstrated to the reasonable satisfaction of the Administrative Agent) is less than 250% of the Assumed Loan Amount (provided that, notwithstanding the foregoing requirement, the Parent, the Borrower and the Subsidiary Guarantors may elect to exclude leasehold interests in real property and fee-owned real property, to the extent that such leasehold interests and fee interests (i) have an aggregate value, measured at the time of any such election, not in excess of \$150,000,000 (valued in accordance with Schedule 6.9(b)-1) or (ii) are listed on Schedule 6.9(b)-2 ), then no later than 90 days after the date of such acquisition or lease commencement: (A) execute and deliver a first priority Mortgage in favor of the Administrative Agent, for the benefit of the Secured Parties, covering such real property, subject to any Liens permitted by Section 7.3; (B) if requested by the Administrative Agent, provide the Lenders with (w) title and extended coverage insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably specified by the Administrative Agent) as well as an ALTA survey thereof, together with a surveyor's certificate, (x) any consents or estoppels reasonably deemed necessary or advisable by the Administrative Agent in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent, (y) an appraisal of the value, or a valuation of, the applicable Mortgaged Property, which shall be reasonably satisfactory to the Administrative Agent, and (z) Phase I environmental reports (and where appropriate based upon such Phase I environmental reports and at the reasonable request of the Administrative Agent, Phase II environmental reports) with

respect to such real property, all in form and substance reasonably satisfactory to the Administrative Agent; (C) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent; (D) deliver to the Administrative Agent a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to such Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and each Loan Party relating thereto) and if any such Mortgaged Property is located in a special flood hazard area, evidence of flood insurance in form and amount reasonably satisfactory to the Administrative Agent; and (E) (x) deliver to the Administrative Agent evidence that short form leases or lease memoranda shall have been duly recorded in the local real estate records, with respect to each Mortgaged Property constituting a leasehold interest and (y) with respect to those Mortgaged Properties consisting of leaseholds so designated by the Administrative Agent described in the preceding clause (x), use commercially reasonable efforts to deliver to the Administrative Agent copies of valid, binding and enforceable lease amendments or landlord agreements in form and content reasonably acceptable to the Administrative Agent, conferring on the Administrative Agent rights of default notice, cure opportunity and such other leasehold lender protections as the Administrative Agent may reasonably require. Notwithstanding the foregoing, the Administrative Agent may extend the date for, or waive, in whole or in part, the foregoing deliveries in its sole discretion.

(c) With respect to any new Subsidiary (other than (i) a Class II Restricted Subsidiary or (ii) an Unrestricted Subsidiary organized under the laws of any jurisdiction outside the United States or (iii) a CFC Holdco) created or acquired after the Restatement Closing Date (which, for the purposes of this paragraph, shall include any existing Subsidiary that becomes a Class I Restricted Subsidiary because it ceases to be an Unrestricted Subsidiary), by the Parent, the Borrower or any Subsidiary Guarantor, promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Subsidiary that is owned by the Parent, the Borrower or any Subsidiary Guarantor (other than any such Capital Stock subject to a Lien expressly permitted by Section 7.3(m)), subject to the Liens permitted by the Guarantee and Collateral Agreement, (ii) deliver to the Administrative Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Parent, the Borrower or such Subsidiary Guarantor, as the case may be, (iii) if such new Subsidiary is a Wholly Owned Subsidiary, cause such new Subsidiary (A) to become a party to the Guarantee and Collateral Agreement and (B) to take such actions necessary or advisable to grant to the Administrative Agent for the benefit of the Secured Parties a perfected first priority security interest in the Collateral described in the Guarantee and Collateral Agreement with respect to such new Subsidiary, subject to the Liens permitted by the Guarantee and Collateral Agreement, including, without limitation, the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent, and (iv) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(d) With respect to any new Class II Restricted Subsidiary or CFC Class II Holdco created or acquired after the Restatement Closing Date by the Parent, the Borrower or any Subsidiary Guarantor (which, for purposes of this paragraph (d), shall include any Unrestricted Subsidiary that becomes a Class II Restricted Subsidiary), promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Administrative Agent deems necessary or advisable in order to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority (subject to the Liens permitted by the Guarantee and Collateral Agreement) security interest in the Capital Stock of such new Subsidiary that is owned by the Parent, the Borrower or any Subsidiary Guarantor (other than any such Capital Stock subject to a Lien expressly permitted by Section 7.3(m)) (provided that in no event shall more than 65% of the total outstanding Capital Stock of any such new Class II Restricted Subsidiary or CFC Class II Holdco be required to be so pledged), (ii) deliver to the Administrative Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Parent, the Borrower or such Subsidiary Guarantor, as the case may be, and take such other action as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Lien of the Administrative Agent thereon, and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(e) Notwithstanding anything else to the contrary contained in this Section or elsewhere in the Agreement, perfection of Collateral shall not be required where either the burden or costs of perfecting a security interest, lien or mortgage is reasonably determined by the Administrative Agent to be excessive in relation to the benefit afforded to the Lenders thereby.

6.10 Further Assurances. From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take such actions, as the Administrative Agent may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement and the other Loan Documents, or of more fully perfecting or renewing the rights of the Administrative Agent and the Lenders with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other Property or assets hereafter acquired by the Parent, the Borrower or any Subsidiary Guarantor which may be deemed to be part of the Collateral) pursuant hereto or thereto. Upon the exercise by the Administrative Agent or any Lender of any power, right, privilege or remedy pursuant to this Agreement or the other Loan Documents which requires any consent, approval, recording, qualification or authorization of any Governmental Authority, the Borrower will execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Administrative Agent or such Lender may be required to obtain from the Borrower or any of its Subsidiaries for such governmental consent, approval, recording, qualification or authorization.

6.11 Designation of Restricted and Unrestricted Subsidiaries. (a) The board of directors of the Borrower may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided that no Default or Event of Default shall have occurred and be continuing immediately prior to or after giving effect to such designation.

(b) The board of directors of the Borrower may designate any Class I or Class II Restricted Subsidiary to be an Unrestricted Subsidiary if such designation complies with paragraph (a) of the definition of the term "Unrestricted Subsidiary" in Section 1.1.

(c) If, at any time, any Unrestricted Subsidiary fails to comply with the definition of "Unrestricted Subsidiary" or is redesignated by the board of directors of the Borrower as a Restricted Subsidiary (i) it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and shall be a Restricted Subsidiary, (ii) any Indebtedness of such Subsidiary shall be deemed to be incurred by a Restricted Subsidiary of the Borrower as of such date and (iii) any Investments in such Subsidiary shall be deemed to be Investments in a Restricted Subsidiary of the Borrower as of such date.

6.12 Maintenance of Separate Existence. With respect to each Unrestricted Subsidiary and Class II Restricted Subsidiary, cause such Subsidiary to do all things necessary to continue to be readily distinguishable from the Parent, the Borrower and the Class I Restricted Subsidiaries and maintain its existence separate and apart from that of the Parent, the Borrower and the Class I Restricted Subsidiaries including, without limitation:

- (a) practicing and adhering to organizational formalities, such as maintaining appropriate books and records;
- (b) observing all organizational formalities in connection with all dealings between itself and the Parent, the Borrower and the Class I Restricted Subsidiaries;
- (c) observing all procedures required by its organizational documents and the laws of the jurisdiction of its organization;
- (d) acting solely in its name and through its duly authorized officers or agents in the conduct of its businesses;
- (e) maintaining its deposit and other bank accounts and all of its assets separate from those of any other Person;
- (f) maintaining its financial records separate and apart from those of any other Person;
- (g) not suggesting in any way, within its financial statements, that its assets are available to pay the claims of creditors of the Parent, the Borrower or any Class I Restricted Subsidiary;
- (h) ensuring that the responsible officers of the Unrestricted Subsidiary or Class II Restricted Subsidiary, as the case may be, duly authorized in accordance with its organizational documents, duly authorize all of its actions;
- (i) ensuring the receipt of proper authorization, when necessary, in accordance with the terms of its organizational documents for its actions;



(j) not (A) having or incurring any Indebtedness to the Parent, the Borrower or any Class I Restricted Subsidiary (except for any such Indebtedness permitted by Section 7.2(k) or (l)); (B) guaranteeing or otherwise becoming liable for any obligations of the Parent, the Borrower (other than Peso Subfacility Loans and Third-Party Peso Loans, if any) or any Class I Restricted Subsidiary; (C) having obligations guaranteed by the Parent, the Borrower or any Class I Restricted Subsidiary except to the extent of any guarantee permitted by Section 7.8; (D) making any loans or advances to the Parent, the Borrower or any Subsidiary Guarantor except for any such Indebtedness that is (i) permitted by Section 7.2, (ii) unsecured, and (iii) subordinated to the Obligations on terms and conditions reasonably satisfactory to the Administrative Agent; (E) holding itself out as responsible for debts of the Parent, the Borrower or any Class I Restricted Subsidiary or for decisions or actions with respect to the affairs of the Parent, the Borrower or any Class I Restricted Subsidiary; (F) operating or purporting to operate as an integrated, single economic unit with respect to the Parent, the Borrower or any Class I Restricted Subsidiary (except to the extent of any guarantee permitted by Section 7.8); and (H) inducing any such third party to reasonably rely on the creditworthiness of the Parent, the Borrower or any Class I Restricted Subsidiary (except to the extent of any guarantee permitted by Section 7.8);

(k) causing the Unrestricted Subsidiaries and the Class II Restricted Subsidiaries to reimburse the Borrower and its other Subsidiaries for the respective shares (determined on a commercially reasonable basis) of the Unrestricted Subsidiaries and Class II Restricted Subsidiaries of the costs of all shared corporate operating services, leases and expenses, including, without limitation, those associated with the services of shared executive officers, employees, consultants and agents, shared computer and other office equipment and software and shared telephone numbers; and otherwise refraining from engaging in any transaction with any of the Parent, the Borrower or any Class I Restricted Subsidiary unless such transaction is consummated (x) on terms and conditions no less favorable to the Unrestricted Subsidiary or Class II Restricted Subsidiary, as the case may be, than transactions consummated on an arms-length basis with unaffiliated Persons and (y) only with the proper approval and authorization in accordance with such Unrestricted Subsidiary's or Class II Restricted Subsidiary's organizational documents, as applicable;

(l) refraining from filing or otherwise initiating or supporting the filing of a motion in any bankruptcy or other insolvency proceeding involving the Parent, the Borrower or any Class I Restricted Subsidiary to substantively consolidate the Parent, the Borrower or any Class I Restricted Subsidiary with such Unrestricted Subsidiary or Class II Restricted Subsidiary;

(m) remaining Solvent;

(n) conducting all of its business (whether written or oral) solely in its own name (other than using servicemarks, trademarks, slogans or similar Intellectual Property which are in common with those used by the Borrower and its Restricted Subsidiaries) so as not to mislead others as to the identity of each of the Unrestricted Subsidiary, Class II Restricted Subsidiary, the Parent, the Borrower and any Class I Restricted Subsidiary; and

(o) maintaining a record with respect to any material asset purchased from the Parent, the Borrower or any Class I Restricted Subsidiary, including bills of sale (or any similar instrument of assignment) and, if appropriate, filings under the Uniform Commercial Code.

**6.13 Post-Restatement Closing Date Actions.**

(a) Within 90 days after the Restatement Closing Date, execute and deliver to the Administrative Agent with respect to each Mortgaged Property listed on Schedule 1.1B, except as otherwise noted thereon (i) a Mortgage Amendment, together with (i) evidence that counterparts of said Mortgage Amendments have been delivered to the title insurance company insuring the Lien of such Mortgages, (ii) a dateddown endorsement to the existing title policy insuring the Lien of each such Mortgage (or a reissued title insurance policy) (the "Mortgage Endorsements"), issued by Stewart Title Guaranty Company (or another title insurance company reasonably acceptable to the Administrative Agent (the "Title Company")), insuring the Lien of such Mortgage (as amended by the applicable Mortgage Amendment) as a valid Lien on the Mortgaged Property described therein, free of any Liens except those permitted under Section 7.3, (iii) the opinions, addressed to the Administrative Agent and the Lenders of (A) outside counsel or in-house counsel, as to the due authorization, execution and delivery of the Mortgage Amendments by the Borrower or any Loan Party, as applicable, and (B) local counsel in each jurisdiction where Mortgaged Property is located regarding the Mortgage Amendments, (iv) with respect to each Mortgage Amendment, such affidavits, certificates, instruments of indemnification and other items (including a so-called "gap" indemnification) as shall be reasonably required to induce the Title Company to issue the Mortgage Endorsements contemplated above and (v) evidence reasonably acceptable to the Administrative Agent of payment by the Borrower of all Mortgage Endorsement premiums, search and examination charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgage Amendments, fixture filings and issuance of the Mortgage Endorsements referred to above, in each case, in form and substance reasonably satisfactory to the Administrative Agent.

(b) Within 45 days after the Restatement Closing Date, deliver to the Administrative Agent the legal opinion of each local counsel listed on Schedule 6.13(b) and of such other special and local counsel as may be reasonably requested by the Administrative Agent, in each case substantially in the form of Exhibit F-2. Such legal opinions shall cover such other matters incident to the transactions contemplated by this Agreement as the Administrative Agent may reasonably require.

(c) Notwithstanding the foregoing, the Administrative Agent may, in its sole discretion, extend the date for the foregoing deliveries.

## SECTION 7. NEGATIVE COVENANTS

The Parent and the Borrower hereby jointly and severally agree that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding or any Loan or other amount is owing to any Lender or any Agent hereunder, each of the Parent, any Intermediate Holdco and the Borrower shall not, and shall not permit any of its Class I Restricted Subsidiaries (and, (i) with respect to Sections 7.2, 7.3, 7.13(a), 7.14 and 7.16, Class II Restricted Subsidiaries and (ii) with respect to Section 7.2, Unrestricted Subsidiaries) to, directly or indirectly:

7.1 Consolidated Net Senior Secured Leverage Ratio. Unless the Majority Revolving Credit Facility Lenders shall otherwise consent in writing, at any time that any Revolving Credit Loans are outstanding, permit the Consolidated Net Senior Secured Leverage Ratio for any period of four consecutive fiscal quarters ending with any fiscal quarter to exceed 4.25 to 1.0.

7.2 Limitation on Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party pursuant to any Loan Document (including Replacement Term Loans);

(b) Indebtedness of the Borrower to any Intermediate Holdco, the Parent or any Subsidiary, and Indebtedness of any Guarantor to the Borrower or any other Guarantor;

(c) (i) Capital Lease Obligations of the Borrower and its Class I Restricted Subsidiaries; (ii) obligations under any leases of the Borrower and any of its Restricted Subsidiaries in existence on the Restatement Closing Date and characterized on the Restatement Closing Date as operating leases that are recharacterized as Capital Lease Obligations after the Restatement Closing Date; (iii) obligations under any EITF 97-10 Capital Leases; (iv) obligations under any Digital Cinema Equipment Lease with DCIP; and (v) obligations secured by Liens permitted by Section 7.3(g) in an aggregate principal amount at any time outstanding not to exceed 7.5% of Consolidated Net Tangible Assets (as determined as of the time of such incurrence);

(d) Indebtedness of the Borrower and the Class I Restricted Subsidiaries outstanding on the Restatement Closing Date or arising under agreements entered into prior to the Restatement Closing Date and in each case listed on Schedule 7.2(d) (other than the Senior Subordinated Notes, the 8.625% Senior Notes, the 5.125% Senior Notes and Capital Lease Obligations) and any refinancings, refundings, renewals or extensions thereof (without any increase in the principal amount thereof (other than any increase not exceeding the amount of all accrued and unpaid interest on the Indebtedness being refinanced, and any fees, premium, if any, and financing costs relating to such refinancing) or any shortening of the maturity of any principal amount thereof);

(e) Guarantee Obligations made in the ordinary course of business by the Borrower or any of its Subsidiaries of obligations of the Borrower or any Subsidiary Guarantor;

(f) Indebtedness of the Borrower and the Guarantors in respect of the Senior Subordinated Notes, including any refinancing thereof, provided that, (w) the aggregate principal amount of such Indebtedness shall not exceed \$200,000,000 plus the amount of any interest, fees, premiums or penalties paid in connection with such refinancing, (x) the maturity of any principal amount thereof shall not be earlier than the date which is 90 days after the seventh anniversary of the Restatement Closing Date, (y) the documents under which the Senior Subordinated Notes are refinanced shall have covenants taken as a whole not materially more restrictive than those applicable to the Indebtedness refinanced thereby and (z) the obligations of the Borrower and the Guarantors in respect of such refinancing Indebtedness are subordinated in right of payment to the Obligations to at least the same extent in all material respects as the obligations of the Borrower in respect of the Senior Subordinated Notes as in effect on the Restatement Closing Date are subordinated to the Obligations;

(g) unsecured Indebtedness of the Parent and any Intermediate Holdco so long as (X) immediately prior to and after giving effect to the incurrence of such Indebtedness, the Parent and the Borrower are in compliance with Section 7.1, (Y) the maturity of any principal amount thereof shall not be earlier than the date which is 90 days after the seventh anniversary of the Restatement Closing Date and (Z) none of the Borrower or any of its Restricted Subsidiaries has any Guarantee Obligation with respect to such Indebtedness;

(h) (i) (A) Non-Recourse Debt of the Borrower or any Class I Restricted Subsidiary secured by fee-owned real property of the Borrower or such Class I Restricted Subsidiary that does not constitute Mortgaged Property and (B) upon transfer of any fee-owned property of the type described in the foregoing clause (A) to an Unrestricted Subsidiary, Non-Recourse Debt of such Unrestricted Subsidiary secured by such property and (ii) Indebtedness in respect of Sale and Leaseback Transactions permitted by Section 7.5; provided that the principal amount of such Non-Recourse Debt pursuant to clause (i)(A) of this paragraph shall not exceed an amount equal to \$125,000,000 at any time outstanding;

(i) Indebtedness of any Unrestricted Subsidiary or Class II Restricted Subsidiary consisting entirely of Non-Recourse Debt; provided that, if any such Indebtedness ceases to be Non-Recourse Debt of such Unrestricted Subsidiary or Class II Restricted Subsidiary, such event shall be deemed to constitute an incurrence of Indebtedness by a Class I Restricted Subsidiary of the Borrower that was not permitted by this Section 7.2(i);

(j) Guarantee Obligations of Unrestricted Subsidiaries in respect of the obligations of other Unrestricted Subsidiaries and Class II Restricted Subsidiaries not otherwise prohibited hereunder, and Guarantee Obligations of Class II Restricted Subsidiaries of obligations of other Class II Restricted Subsidiaries not otherwise prohibited hereunder;

(k) intercompany Indebtedness of any Class II Restricted Subsidiary or Unrestricted Subsidiary to the Borrower or any Class I Restricted Subsidiary outstanding on the date hereof and listed on Schedule 7.2(k) (including any accrued but unpaid interest thereon accruing subsequent to the Restatement Closing Date) and any refinancings, refundings, renewals or extensions thereof (without any increase in the principal amount thereof other than the amount of any accrued interest) or shortening of the maturity of any principal amount thereof (which shall not prohibit any prepayments made with cash), which Indebtedness is evidenced by a promissory note in form and substance reasonably satisfactory to the Administrative Agent which has been delivered to the Administrative Agent;

(l) other Indebtedness of an Unrestricted Subsidiary or Class II Restricted Subsidiary to the Borrower or any Class I Restricted Subsidiary permitted by Section 7.8(h);

(m) Indebtedness of any Person that is acquired by the Borrower or any of its Restricted Subsidiaries and becomes a Restricted Subsidiary or is merged with or into the Borrower or any of its Restricted Subsidiaries after the Restatement Closing Date and Indebtedness secured by an asset acquired by the Borrower or any of its Restricted Subsidiaries after the Restatement Closing Date and, in each case, refinancings, renewals, extensions, refundings and replacements thereof (provided that any such refinancing, renewal, extension, refunding or replacement shall not (i) increase the principal amount of such Indebtedness other than by the amount of any accrued interest, (ii) shorten the maturity of any principal amount of such Indebtedness, (iii) change the obligor under such Indebtedness or (iv) expand the Property securing such Indebtedness); provided that (A) such original Indebtedness was in existence on the date such Person became a Restricted Subsidiary or merged with or into the Borrower or any of its Restricted Subsidiaries or on the date that such asset was acquired, as the case may be, (B) such original Indebtedness was not created in contemplation of such Person becoming a Restricted Subsidiary or merging with or into the Borrower or any of its Restricted Subsidiaries or such asset being acquired, as the case may be, (C) immediately after giving effect to the acquisition of such Person or asset by the Borrower or any of its Restricted Subsidiaries, as the case may be, no Default or Event of Default shall have occurred and be continuing and (D) after giving pro forma effect to such acquisition, the Consolidated Net Senior Secured Leverage Ratio shall not be greater than 3.0 to 1.0;

(n) Indebtedness of the Borrower or any Class II Restricted Subsidiary under the Peso Subfacility and/or under a loan facility denominated in Pesos providing for loans made under documentation other than the Loan Documents ("Third-Party Peso Loans") in an aggregate maximum principal amount as of any Peso Borrowing Date and after giving effect to the borrowings and any repayments to be made on such date not to exceed the Peso equivalent (calculated as of the Peso Borrowing Calculation Date) of \$25,000,000 and guarantees thereof by the Parent, any Intermediate Holdco, the Borrower or any Restricted Subsidiary; provided, that the aggregate amount available under the Peso Subfacility, Third-Party Peso Loans and the Revolving Credit Commitments shall not exceed the Total Revolving Credit Commitments;

(o) Indebtedness resulting from the endorsement of negotiable instruments in the ordinary course of business or arising from the honoring of a check, draft or similar instrument presented by the Parent, any Intermediate Holdco, the Borrower or any of its Subsidiaries in the ordinary course of business against insufficient funds;

(p) Indebtedness of the Borrower or any Subsidiary in respect of (i) workers' compensation claims and self-insurance obligations incurred in the ordinary course of business, (ii) the financing of insurance premiums with the providers of such insurance or their Affiliates in the ordinary course of business, (iii) surety, appeal and performance bonds entered into in the ordinary course of business and (iv) take-or pay obligations arising under supply agreements entered into in the ordinary course of business;

(q) Indebtedness arising from or representing deferred compensation to employees of the Parent or any of its Subsidiaries incurred in the ordinary course of business;

(r) additional Indebtedness of the Borrower and Subsidiary Guarantors in an aggregate principal amount not to exceed \$250,000,000 at any one time outstanding;

(s) senior unsecured or subordinated Indebtedness of the Borrower or any other Loan Party incurred to refinance all or a portion of the outstanding Term Loans plus the amount of any interest, fees, premiums, and penalties paid in connection with such refinancing; provided that (i) 100% of the net proceeds from the incurrence of such Indebtedness is applied to refinance all or a portion of the Term Loans plus the amount of any interest, fees, premiums and penalties paid in connection with such refinancing and (ii) the maturity of any principal amount thereof shall not be earlier than the date which is 90 days after the seventh anniversary of the Restatement Closing Date;

(t) Indebtedness of the Borrower or any other Loan Party in respect of the 8.625% Senior Notes, including any refinancing thereof, provided that (i) the aggregate principal amount of such Indebtedness shall not exceed \$470,000,000 plus the amount of any interest, fees, premiums or penalties paid in connection with such refinancing and any original issue discount incurred in connection with such refinancing Indebtedness, (ii) the maturity of any principal amount thereof shall not be earlier than the date which is 90 days after the seventh anniversary of the Restatement Closing Date, and (iii) the documents under which the 8.625% Senior Notes are refinanced shall have covenants taken as a whole not materially more restrictive than those applicable to the Indebtedness refinanced thereby;

(u) Indebtedness of the Borrower or any other Loan Party in respect of the 5.125% Senior Notes, including any refinancing thereof, provided that (i) the aggregate principal amount of such Indebtedness shall not exceed \$400,000,000 plus the amount of any interest, fees, premiums or penalties paid in connection with such refinancing and any original issue discount incurred in connection with such refinancing Indebtedness,

(ii) the maturity of any principal amount thereof shall not be earlier than the date which is 90 days after the seventh anniversary of the Restatement Closing Date, and  
(iii) the documents under which the 5.125% Senior Notes are refinanced shall have covenants taken as a whole not materially more restrictive than those applicable to the Indebtedness refinanced thereby;

(v) unsecured Indebtedness of the Borrower or any of its Class I Restricted Subsidiaries in an aggregate principal amount not to exceed \$300,000,000 at any time outstanding incurred to finance a Permitted Acquisition; provided that (i) the maturity of any principal amount thereof shall not be earlier than the date which is 90 days after the seventh anniversary of the Restatement Closing Date and (ii) after giving pro forma effect to such Permitted Acquisition, the Consolidated Total Leverage Ratio as of the most recent quarter end for which financial statements have been delivered to the Agents pursuant to Section 6.1 is less than 5.00 to 1.00;

(w) Indebtedness incurred by the Borrower or any Restricted Subsidiary with respect to Digital Projector Financing in an aggregate principal amount incurred not to exceed \$100,000,000 at any time outstanding;

(x) unsecured Indebtedness of the Parent or any Intermediate Holdco incurred to refinance all or a portion of any Indebtedness incurred pursuant to Section 7.2(g) or this Section 7.2(x); provided that (i) 100% of the net proceeds from the incurrence of such Indebtedness is applied to refinance all or a portion of the Indebtedness incurred pursuant to Section 7.2(g) or this Section 7.2(x), in each case plus the amount of any interest, fees, premiums and penalties paid in connection with such refinancing and (ii) the maturity of any principal amount thereof shall not be earlier than the date which is 90 days after the seventh anniversary of the Restatement Closing Date;

(y) senior unsecured or subordinated Indebtedness of the Borrower or any other Loan Party incurred to refinance all or a portion of any Indebtedness incurred pursuant to Section 7.2(f), Section 7.2(s) or this Section 7.2(y); provided that (i) 100% of the net proceeds from the incurrence of such Indebtedness is applied to refinance all or a portion of the Indebtedness incurred pursuant to Section 7.2(f), Section 7.2(s) or this Section 7.2(y), in each case plus the amount of any interest, fees, premiums and penalties paid in connection with such refinancing and (ii) the maturity of any principal amount thereof shall not be earlier than the date which is 90 days after the seventh anniversary of the Restatement Closing Date; and

(z) unsecured Indebtedness of the Borrower or any of its Class I Restricted Subsidiaries incurred to refinance all or a portion of any Indebtedness incurred pursuant to Section 7.2(v) or this Section 7.2(z); provided that (i) 100% of the net proceeds from the incurrence of such Indebtedness is applied to refinance all or a portion of the Indebtedness incurred pursuant to Section 7.2(v) or this Section 7.2(z), in each case plus the amount of any interest, fees, premiums and penalties paid in connection with such refinancing and (ii) the maturity of any principal amount thereof shall not be earlier than the date which is 90 days after the seventh anniversary of the Restatement Closing Date.

7.3 Limitation on Liens. Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

- (a) Liens for taxes, fees, assessments and other governmental charges not yet delinquent or which remain payable without penalty or which are being contested in good faith by appropriate proceedings, provided that adequate reserves with respect thereto are maintained on the books of the Borrower or such other Person, as the case may be, in conformity with GAAP;
- (b) carriers', warehousemen's, landlords' (whether statutory or otherwise), mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or remain payable without penalty or that are being contested in good faith by appropriate proceedings;
- (c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;
- (d) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;
- (e) easements, rights-of-way, restrictions, minor defects and irregularities in title and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and which do not in any case materially detract from the value of the Property subject thereto or interfere with the ordinary conduct of the business of the Borrower and its Restricted Subsidiaries;
- (f) Liens in existence on the date hereof listed on Schedule 7.3(f), securing Indebtedness permitted by Section 7.2(d), and any replacements of such Liens in connection with any refinancing of such Indebtedness permitted by such Section, provided that no such Lien is spread to cover any additional Property after the Restatement Closing Date (other than additions, accessions and improvements thereto and proceeds thereof) and that the amount of Indebtedness (plus any interest, fees, premium, if any, and financing costs) secured thereby is not increased;
- (g) Liens securing Indebtedness incurred pursuant to Section 7.2(c) to finance the acquisition, construction or repair of fixed or capital assets or to refinance any such Indebtedness, provided that (i) such Liens shall be created no more than 270 days after the acquisition, construction or repair of such fixed or capital assets, (ii) such Liens do not at any time encumber any Property other than the Property financed by such Indebtedness (other than any improvements, proceeds, additions or accessions with respect thereto) and (iii) the amount of Indebtedness secured thereby is not increased (other than to the extent of accrued interest, fees, premium, if any and financing costs);



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- (h) Liens created pursuant to the Security Documents;
- (i) any interest or title of a lessor under any lease entered into by the Borrower or any other Subsidiary in the ordinary course of its business and covering only the assets so leased;
- (j) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; provided that (i) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the Borrower in excess of those set forth by regulations promulgated by the Federal Reserve Board, and (ii) such deposit account is not intended by the Borrower or any of its Subsidiaries to provide collateral to the depository institution;
- (k) Liens on fee-owned property of the Borrower and Class I Restricted Subsidiaries not subject to a Mortgage securing Non-Recourse Debt or Sale and Leaseback Transactions permitted by Section 7.5;
- (l) Liens on assets of any Class II Restricted Subsidiary securing Non-Recourse Debt of such Class II Restricted Subsidiary permitted by Section 7.2;
- (m) Liens securing Indebtedness permitted by Section 7.2(m) on property of a Person or on an asset existing at the time such Person is merged with or into or consolidated with or is acquired by the Borrower or any Class I Restricted Subsidiary of the Borrower or such asset is so acquired; provided that such Liens were not incurred in connection with or in contemplation of such transaction and do not extend to any assets other than those of the Person merged into or consolidated with or acquired by, or the asset so acquired by, the Borrower or such Class I Restricted Subsidiary, as applicable, and accessions, additions and improvements thereto and proceeds thereof;
- (n) Liens on assets of a Subsidiary of the Borrower in favor of the Borrower or any Guarantor;
- (o) Liens in connection with the defeasance of the 8.625% Senior Notes, the 5.125% Senior Notes, the Senior Subordinated Notes or any other Indebtedness permitted under Section 7.2 issued pursuant to an indenture, covering the proceeds of Indebtedness which constitutes refinancing Indebtedness of such Indebtedness permitted by Section 7.2 and other funds intended for such purpose, provided that, such Lien covers proceeds in an aggregate amount necessary solely to defease the principal, interest, premium, if any, and, if required by the terms of the relevant indenture, fees, costs and expenses due in connection with the defeasance of such Indebtedness;
- (p) Liens of the trustee under Section 7.07 of the Senior Subordinated Note Indenture, Section 7.07 of the 8.625% Senior Note Indenture, Section 7.07 of the 5.125% Senior Note Indenture and similar provisions under other indentures governing Indebtedness permitted under this Agreement on money or property held or collected by the trustee thereunder;

(q) Liens on assets of any joint venture or partnership pursuant to the organizational documents of such joint venture or partnership provided that, such Liens cover only the assets of such joint venture or partnership, as the case may be;

(r) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.1(h);

(s) Liens in the nature of a right of first refusal, redemption rights or other restrictions on transfer existing as of the Restatement Closing Date in respect of the shares or partnership interest of Fandango, Inc., Laredo Theatre, Ltd., Greeley, Ltd., NCM Holdings or National CineMedia, LLC held by the Borrower and its Class I Restricted Subsidiaries;

(t) the rights of film distributors under film licensing contracts entered into by the Borrower or any of its Subsidiaries in the ordinary course of business on a basis customary in the movie exhibition industry;

(u) Liens on the stock of and assets of Class II Restricted Subsidiaries to secure the Peso Subfacility or the Third-Party Peso Loans;

(v) Liens securing Indebtedness of the Borrower and Subsidiary Guarantors permitted under Section 7.2(r);

(w) Liens on cash or Cash Equivalents constituting an earnest money deposit, escrow, holdback, purchase price prepayment, purchase price adjustment or similar deposit or payment made by the Borrower or any Subsidiary in connection with any proposed acquisition or disposition of assets or property permitted under this Agreement;

(x) (i) Licenses, sublicenses or similar rights to use any patent, trademark, copyright or other intellectual property right granted to others by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business which do not (A) interfere in any material respect with the business of the Borrower or such Restricted Subsidiary or (B) secure Indebtedness and (ii) any rights reserved by or vested in any Governmental Authority with respect to any franchise, grant, license or permit held by the Borrower or any of its Restricted Subsidiaries;

(y) Liens securing insurance premium financing arrangements entered into in the ordinary course of business;

(z) Liens securing obligations in an aggregate amount not to exceed \$10,000,000 at any one time outstanding;

(aa) any Lien, encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of DCIP, any Unrestricted Subsidiary, any joint venture or any interest acquired pursuant to a Permitted Business Investment;

(bb) Liens securing Indebtedness permitted by Section 7.2(w), provided that such Liens cover only the assets financed with such Indebtedness and accessions, additions and improvements thereto and proceeds thereof; and

(cc) Liens consisting of an agreement to dispose of any property in a disposition permitted under this Agreement.

In each case set forth above and in Section 7.2, notwithstanding any stated limitation on the assets or property that may be subject to such Lien, a Lien on a specified asset or property or group or type of assets or property may also apply to all improvements, additions and accessions thereto, assets and property affixed or appurtenant thereto, and all products and proceeds thereof, including dividends, distributions, interest and increases in respect thereof.

7.4 Limitation on Fundamental Changes. Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its Property, except that:

(a) the Parent, any Intermediate Holdco or any Restricted Subsidiary of the Borrower may be merged, consolidated or amalgamated with or into the Borrower (provided that the Borrower shall be the continuing or surviving corporation) or with or into any Guarantor provided that (i) a Guarantor shall be the continuing or surviving corporation or (ii) simultaneously with such transaction, the continuing or surviving corporation shall become a Guarantor and the Borrower shall comply with Section 6.9 in connection therewith);

(b) any Person may enter into a merger, consolidation or amalgamation with any Class I Restricted Subsidiary as a means of implementing a Permitted Acquisition permitted by Section 7.8 (provided that such Class I Restricted Subsidiary shall be the continuing or surviving corporation);

(c) any Person may Dispose of all or substantially all of its Property pursuant to a transaction permitted by Section 7.5; and

(d) Specified Reorganizations may be consummated if, in each case, (i) each Intermediate Holdco shall be a wholly-owned Subsidiary of the Parent or another Intermediate Holdco, (ii) the Borrower shall be a wholly-owned Subsidiary of an Intermediate Holdco, (iii) each Intermediate Holdco shall become a party to the Guarantee and Collateral Agreement as a Guarantor, and (iv) the Borrower, each Intermediate Holdco and the Administrative Agent shall have entered into an amendment to this Agreement that is satisfactory to the Administrative Agent in its reasonable discretion, amending clause (c) of the definition of the term "Change of Control," Section 7.6, Section 7.15 and such other provisions of this Agreement and the other Loan Documents as the Borrower and the Administrative Agent shall reasonably deem necessary to reflect the consummation of such Specified Reorganization (and such amendment shall not require the approval or signature of any other Lender or Agent).

7.5 Limitation on Disposition of Property. Dispose of any of its Property, whether now owned or hereafter acquired, or, in the case of any Class I Restricted Subsidiary, issue or sell any shares of such Class I Restricted Subsidiary's Capital Stock to any Person, except:

(a) the Disposition of obsolete, surplus or worn out property in the ordinary course of business, including the sale of parcels of real property adjacent to parcels being used in the Borrower's or any Class I Restricted Subsidiary's business, which adjacent parcels are not necessary in the business of the Borrower or such Class I Restricted Subsidiary;

(b) (i) the Disposition of inventory in the ordinary course of business and (ii) the granting of leases, licenses, subleases and sublicenses of real and personal property (including Intellectual Property) in the ordinary course of business and which do not materially interfere with the business of the Borrower and its Subsidiaries;

(c) Dispositions permitted by Section 7.4(a), (b) and (d) and Sections 7.6 and 7.8;

(d) the Disposition of any Property to, or the sale or issuance of any Subsidiary's Capital Stock to, the Borrower or any Subsidiary Guarantor;

(e) any Recovery Event;

(f) an exchange or "swap" of fixed, tangible assets of the Borrower or any of its Class I Restricted Subsidiaries for the assets of a Person other than the Borrower and its Class I Restricted Subsidiaries; provided that, (i) the assets received by the Borrower or such Class I Restricted Subsidiary will be used or useful in a similar line of business that the Borrower and its Class I Restricted Subsidiaries are engaged in on the date of this Agreement or that are reasonably related thereto, (ii) the Borrower or such Class I Restricted Subsidiary receives reasonably equivalent value for such assets, such equivalent value to be demonstrated to the reasonable satisfaction of the Administrative Agent (or, in the case of an exchange or "swap" with a non-Affiliate of any Loan Party, as determined by the board of directors of the Borrower or such Class I Restricted Subsidiary, as the case may be) and (iii) if the asset which is the subject of such exchange or "swap" constituted Collateral hereunder, the Borrower or such Class I Restricted Subsidiary shall take such action necessary to create and perfect the security interest of the Administrative Agent for the benefit of the Secured Parties in the assets received by the Borrower or such Class I Subsidiary in such exchange or "swap" pursuant to Section 6.9, provided further that, the fair market value of all such assets exchanged or "swapped" after the Restatement Closing Date shall not exceed \$150,000,000 in the aggregate;

(g) the issuance and sale of directors' qualifying shares and shares required by applicable law to be held by a Person other than the Borrower or its Class I Restricted Subsidiaries;

(h) the issuance and sale of minority interests in joint ventures, partnerships and other entities to third parties to the extent that the proceeds of such sale are reinvested in the related joint venture, partnership or other entity;

- (i) any Disposition of digital cinema equipment in connection with a Digital Cinema Equipment Lease with DCIP or Digital Projector Financing;
- (j) a sale or other Disposition of the type described in EITF 97-10 in connection with a sale and leaseback transaction otherwise permitted hereby;
- (k) the Disposition of any real property subject to a sale contract on the Restatement Closing Date as described on Schedule 7.5(k);
- (l) (i) the Disposition of the Borrower's or any Class I Restricted Subsidiary's minority interest in National CineMedia, LLC, NCM Holdings or any holding company holding any such interest and/or (ii) Disposition of any interest in DCIP, any Unrestricted Subsidiary, any joint venture or any interest acquired pursuant to a Permitted Business Investment, and, in each case under this Section 7.5(l), the subsequent Disposition of any consideration received pursuant to such Disposition;
- (m) the Disposition of cash and Cash Equivalents permitted under this Agreement;
- (n) Dispositions of Property pursuant to contracts between the Borrower and the U.S. Department of Justice or the Federal Trade Commission related to any Permitted Acquisition; and
- (o) the Disposition after the Restatement Closing Date of other assets having a fair market value not to exceed \$500,000,000 in the aggregate.

Certain Dispositions pursuant to this Section 7.5 may give rise to mandatory prepayment obligations under Section 2.10(b).

7.6 Limitation on Restricted Payments. Declare or pay any dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, retirement or other acquisition for value of, any Capital Stock of the Parent, any Intermediate Holdco, the Borrower or any Class I Restricted Subsidiary, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of the Parent, any Intermediate Holdco, the Borrower or any Class I Restricted Subsidiary, or enter into any derivatives or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a "Derivatives Counterparty") obligating the Parent, any Intermediate Holdco, the Borrower or any Class I Restricted Subsidiary to make payments to such Derivatives Counterparty as a result of any change in market value of any such Capital Stock (collectively, "Restricted Payments"), except that:

- (a) any Subsidiary may make Restricted Payments to the Borrower or any Subsidiary that owns the common stock (or equivalent ownership interests) of the Subsidiary making such Restricted Payment;

(b) the Parent may make Restricted Payments in the form of common stock of the Parent or preferred stock of the Parent provided that, in the case of preferred stock, such preferred stock is not redeemable at the option of the holder thereof and not mandatorily redeemable in any circumstance until after the date which is 90 days after the seventh anniversary of the Restatement Closing Date;

(c) so long as no Default or Event of Default shall have occurred and be continuing, the Borrower may make Restricted Payments to the Parent (or to one or more Intermediate Holdcos, which may make Restricted Payments to other Intermediate Holdcos and to the Parent), to permit the Parent to purchase, and the Parent may purchase, the Parent's common stock or common stock options from present or former officers or employees (and their heirs, estates and assigns) of the Parent, the Borrower or any Subsidiary upon the death, disability or termination of employment of such officer or employee, provided, that the aggregate amount of payments under this clause shall not exceed \$3,000,000 in any twelve month period (with unused amounts in any twelve month period being carried over to succeeding twelve months periods subject to a maximum carry-over amount of \$6,000,000);

(d) the Borrower may make Restricted Payments to the Parent (or to one or more Intermediate Holdcos, which may make Restricted Payments to other Intermediate Holdcos and to the Parent), to permit Parent to pay (i) any taxes which are due and payable by the Parent, the Borrower and their Subsidiaries as part of a consolidated group (including, without limitation, franchise taxes and expenses required to maintain corporate existence), (ii) customary salary, bonus and other benefits payable to officers, directors and employees of Parent, the Borrower and their Subsidiaries to the extent such salaries, bonuses and other benefits are directly or indirectly attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries, including the Borrower's proportionate share of such amounts relating to Parent being a public company, including directors' fees; (iii) general corporate operating and overhead costs and expenses of Parent to the extent such costs and expenses are directly or indirectly attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries, including the Borrower's proportionate share of the expenses relating to Parent being a public company; (iv) principal and interest on Indebtedness permitted under Section 7.2; and (v) reasonable fees and expenses other than to Affiliates of the Borrower related to any unsuccessful equity or debt offering of Parent;

(e) the Borrower or any Class I Restricted Subsidiary may make Restricted Payments to any other Person to repurchase minority interests in any joint venture, partnership or other entity which is a Subsidiary of the Borrower;

(f) the Parent, any Intermediate Holdco, the Borrower or any Class I Restricted Subsidiary may purchase, redeem, retire or otherwise acquire its Capital Stock with the proceeds of a substantially contemporaneous issuance of new shares of its common stock or preferred stock that is not redeemable at the option of the holder thereof and not mandatorily redeemable in any circumstance until after the date which is 90 days after the seventh anniversary of the Restatement Closing Date;

(g) the Borrower and its Subsidiaries may, upon the sale of any Subsidiary of the Borrower or any assets of such Subsidiary, make distribution of the proceeds of such sale to any holders of minority equity interests in such Subsidiary as required by the partnership agreement, joint venture agreement or other analogous agreement of such Subsidiary, as the case may be, provided that, such sale is permitted under Section 7.5;

(h) any Subsidiary of the Borrower that is not 100% owned, directly or indirectly, by the Borrower may make distributions to its equity holders as required by its respective partnership agreement, joint venture agreement or other analogous agreement of such Subsidiary, provided that, the aggregate amounts distributed pursuant to this clause (h) to Persons other than the Borrower and its Subsidiaries shall not exceed \$15,000,000 in any Fiscal Year;

(i) the Parent, any Intermediate Holdco, the Borrower or any Class I Restricted Subsidiary may make additional Restricted Payments in an amount not to exceed the Applicable Amount at the time of, and immediately prior to the making of, any such Restricted Payment; provided that, at the time of and immediately after giving effect to any such Restricted Payment under this paragraph (i), no Default or Event of Default shall have occurred and be continuing. For the avoidance of doubt, any Restricted Payment permitted and paid pursuant to this Section 7.6(i) shall only have to satisfy the requirements detailed herein at the time of the initial Restricted Payment. Following such Restricted Payment, the recipient may transfer such payment to another Person without such transfer being deemed an additional Restricted Payment for purposes of this Section 7.6(i); and

(j) any Loan Party may purchase, redeem or otherwise acquire or retire Capital Stock if such purchase, redemption, acquisition or retirement occurs or is deemed to occur upon (y) the exercise of stock options, warrants or other equity-based awards to the extent such Capital Stock represents a portion of the exercise price of such options, warrants or other equity-based awards or (z) the exercise of stock options, warrants or other equity-based awards or the vesting or issuance of shares of restricted stock or other Capital Stock to the extent such Capital Stock represents a portion of the tax liability of the holder thereof with respect thereto.

7.7 Limitation on Capital Expenditures. Make or commit to make any Capital Expenditures except:

(a) Capital Expenditures made (or deemed made) with the proceeds of any Reinvestment Deferred Amount (including Capital Expenditures made during the six-month period prior to the relevant Reinvestment Event);

(b) Capital Expenditures in any Fiscal Year to finance the acquisition, construction or leasing of fixed or capital assets of the Borrower and its Class I Restricted Subsidiaries in the ordinary course of business not exceeding the Applicable Consolidated EBITDA Amount for such Fiscal Year;

provided, that (x) such amounts referred to above, if not so expended in the Fiscal Year for which it is permitted, may be carried over for expenditure in the next succeeding Fiscal Year and (y) Capital Expenditures made pursuant to this paragraph (b) during any Fiscal Year shall be deemed made, first, in respect of amounts permitted for such Fiscal Year as provided above and, second, in respect of amounts carried over from the prior Fiscal Year pursuant to clause (x) above;

(c) to the extent that no amounts under Section 7.7(a) and (b) are available, Capital Expenditures to finance the acquisition, construction or leasing of fixed or capital assets in an amount not to exceed the Applicable Amount at the time of, and immediately prior to the making of, such Capital Expenditure; provided that, immediately prior to and after giving effect to such Capital Expenditure under this paragraph (c), no Default or Event of Default shall have occurred and be continuing; and

(d) notwithstanding anything in this Section 7.7 to the contrary, and without utilization of any amounts described in paragraphs (a) through (c) of this Section 7.7, purchases of digital projectors and other digital cinema equipment from or with DCIP.

7.8 Limitation on Investments. Make any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "Investments"), except:

(a) extensions of trade credit in the ordinary course of business;

(b) Investments in Cash Equivalents;

(c) Investments arising in connection with the incurrence of Indebtedness permitted by Sections 7.2(b), (e) and (k) (and any Investment consisting of equity interests arising upon the conversion to equity of any Indebtedness permitted by Section 7.2(k)) and any guarantee permitted by Section 7.2(a), (f), (g), (m), (n), (q), (r), (s), (t), (u), (v), (w), (x), (y) or (z);

(d) Investments in assets useful in the Borrower's or a Class I Restricted Subsidiary's business (other than inventory) made by the Borrower or any of its Subsidiaries with the proceeds of any Reinvestment Deferred Amount;

(e) Investments (other than those relating to the incurrence of Indebtedness permitted by Section 7.8(c)) by the Parent, any Intermediate Holdco, the Borrower or any of its Restricted Subsidiaries in the Borrower or any Person that, prior to such Investment, is a Subsidiary Guarantor or an Intermediate Holdco;

(f) equity interests acquired by the Borrower or any Restricted Subsidiary in a Person engaged in the indoor motion picture exhibition business if (i) such Person's theaters are managed by the Borrower or such Restricted Subsidiary, (ii) such equity interest is acquired solely in exchange for services rendered in connection with the management of such Person's theaters, (iii) the board of directors of the Borrower determines that such acquisition is in the best interests of the Borrower and (iv) promptly after the acquisition of such equity interests, such equity interests are pledged to the Administrative Agent for the benefit of the Secured Parties to the extent required by Section 6.9;



(g) loans and advances to employees of the Parent, any Intermediate Holdco, the Borrower or any of the Class I Restricted Subsidiaries in the ordinary course of business (including for travel and entertainment expenses) in an aggregate amount not to exceed \$1,000,000 at any one time outstanding;

(h) Investments by the Borrower or any of its Class I Restricted Subsidiaries in Unrestricted Subsidiaries, non-Guarantor Class I Restricted Subsidiaries, Class II Restricted Subsidiaries, partnerships, joint ventures and other entities that are not Guarantors in an amount not to exceed the Applicable Amount at the time of, and immediately prior to the making of, any such Investment; provided that, (i) any such amounts invested in any entity that is not a Subsidiary and the primary business of which is not a Permitted Business shall not exceed \$100,000,000 in the aggregate at any one time outstanding (measured at the time each such Investment is made) during the term of this Agreement and (ii) immediately prior to and after giving effect to such Investment under this paragraph (h), no Default or Event of Default shall have occurred and be continuing; and provided further that (x) transfers by the Borrower or the Class I Restricted Subsidiaries to any Unrestricted Subsidiary of fee-owned property in connection with the incurrence by such Unrestricted Subsidiary of Non-Recourse Debt secured by such fee-owned property, as contemplated by Section 7.2(h) (i)(B), (y) Investments in Brazilco by any Unrestricted Subsidiary that is subsequently designated as a Class I Restricted Subsidiary, and (z) Investments in Unrestricted Subsidiaries and CFC Holdcos consisting of the Capital Stock of an Unrestricted Subsidiary or a CFC Holdco in each case shall not constitute Investments for purposes of determining the Applicable Amount;

(i) Investments by the Borrower or any of its Class I Restricted Subsidiaries in Permitted Acquisitions, provided that, (A) to the extent such Investment results in the creation or acquisition of a Subsidiary of the Borrower (other than an Excluded Foreign Subsidiary of the Class I Restricted Subsidiary so acquired), such Subsidiary must be a Class I Restricted Subsidiary and (B) immediately prior to and after giving effect to such Permitted Acquisition, no Default or Event of Default shall have occurred and be continuing;

(j) Investments permitted by Sections 7.5(b), 7.5(f), 7.5(h), 7.6 and 7.16;

(k) the Rave Acquisition;

(l) Investments in Subsidiaries of the Borrower resulting from purchases of minority interests in such Subsidiaries in exchange for the Parent's common stock;

(m) Investments by the Borrower or any of its Class I Restricted Subsidiaries consisting of refundable construction advances made with respect to the construction of motion picture exhibition theatres in the ordinary course of business;

(n) Investments by the Borrower or any of its Class I Restricted Subsidiaries consisting of the licensing or contribution of Intellectual Property pursuant to joint marketing arrangements;

(o) Investments by the Borrower or any of its Class I Restricted Subsidiaries received in connection with the bankruptcy or reorganization of or settlement of, delinquent accounts and disputes with or judgments against, customers and suppliers, in each case in the ordinary course of business; and

(p) Investments in DCIP in an aggregate amount (measured on the date each such Investment was made and without giving effect to subsequent changes in value) not to exceed, at any one time outstanding, \$100,000,000.

7.9 Limitation on Optional Payments and Modifications of Debt Instruments; Amendments to Certificate of Incorporation.

(a) Prepay, repurchase or redeem or otherwise defease or acquire the 8.625% Senior Notes, the 5.125% Senior Notes, the Senior Subordinated Notes or Indebtedness incurred pursuant to Section 7.2(g), (s), (t), (u), (v), (x), (y) or (z); provided, however, that, so long as no Default or Event of Default shall have occurred and be continuing at the date of such prepayment, repurchase, redemption or other defeasance or acquisition or would result therefrom, the Parent, any Intermediate Holdco, the Borrower or any Restricted Subsidiary may prepay, repurchase, redeem, defease or acquire: (i) the 8.625% Senior Notes; (ii) the 5.125% Senior Notes, the Senior Subordinated Notes and Indebtedness incurred pursuant to Section 7.2(g), (s), (t), (u), (v), (x), (y) or (z) for an aggregate price that does not exceed the Applicable Amount at the time of such prepayment, repurchase, redemption, defeasance or other acquisition; (iii) the 5.125% Senior Notes or Indebtedness incurred pursuant to Section 7.2(t) or 7.2(u) with the proceeds of Indebtedness incurred pursuant to Section 7.2(t) or 7.2(u); (iv) the Senior Subordinated Notes with the proceeds of any refinancing permitted by Section 7.2(f); (v) Indebtedness incurred pursuant to Section 7.2(g) or 7.2(x) with the proceeds of Indebtedness incurred pursuant to Section 7.2(x); (vi) Indebtedness incurred pursuant to Section 7.2(s) or 7.2(y) with the proceeds of Indebtedness incurred pursuant to Section 7.2(y); and (vii) Indebtedness incurred pursuant to Section 7.2(v) or 7.2(z) with the proceeds of Indebtedness incurred pursuant to Section 7.2(z);

(b) amend, modify or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of the 8.625% Senior Notes, the 5.125% Senior Notes, the Senior Subordinated Notes or any Indebtedness incurred pursuant to Section 7.2(g), (s), (t), (u), (v), (x), (y) or (z), in each case if, after giving effect to such amendment, modification or other change, such Indebtedness would not be permitted to be incurred under such Section 7.2(g), (s), (t), (u), (v), (x), (y) or (z), as appropriate; or

(c) amend its certificate of incorporation in any manner reasonably determined by the Administrative Agent to be material and adverse to the Lenders.

7.10 Limitation on Transactions with Affiliates Make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (each, an "Affiliate Transaction"), involving aggregate payments or consideration in excess of \$10.0 million unless:

(i) the Affiliate Transaction is on terms that are no less favorable to the Parent, the Intermediate Holdco, the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Parent, the Intermediate Holdco, the Borrower or such Restricted Subsidiary with a Person who is not an Affiliate; and

(ii) the Borrower delivers to the Administrative Agent:

(a) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$10.0 million, an officer's certificate certifying that such Affiliate Transaction complies with this Section 7.10; and

(b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$50.0 million, a resolution of the board of directors of the Parent and the Borrower set forth in an officer's certificate certifying that such Affiliate Transaction complies with this Section 7.10 and that such Affiliate Transaction has been approved by a majority of the disinterested members of the board of directors of the Parent and the Borrower.

The following items shall be deemed to not be Affiliate Transactions and, therefore, shall not be subject to the provisions of the prior paragraph:

- (1) any employment, consulting or similar agreement or other compensation arrangement entered into by the Parent, any Intermediate Holdco, the Borrower or any of its Restricted Subsidiaries in the ordinary course of business of the Parent, any Intermediate Holdco, the Borrower or such Restricted Subsidiary;
- (2) transactions between or among the Parent, any Intermediate Holdco, the Borrower and/or its Restricted Subsidiaries;
- (3) transactions with a Person that is an Affiliate of the Parent solely because the Parent or any of its Subsidiaries owns Capital Stock in, or controls, such Person;
- (4) reasonable fees and expenses and compensation paid to, and indemnity provided on behalf of, officers, directors or employees of the Parent or any Subsidiary as determined in good faith by the board of directors or senior management of the Parent;

(5) sales of Capital Stock (other than Disqualified Stock) to Affiliates of the Parent and the granting of registration and other customary rights in connection therewith;

(6) Restricted Payments that are permitted by Section 7.6 and Investments permitted under Section 7.8;

(7) transactions pursuant to any contract or agreement listed on Schedule 7.10, as in effect on the Restatement Closing Date, in each case as amended, modified or replaced from time to time so long as the amended, modified or new agreements, taken as a whole, are not materially less favorable to the Parent, any Intermediate Holdco, the Borrower and its Restricted Subsidiaries taken as a whole than those in effect on the Restatement Closing Date;

(8) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case, in the ordinary course of business and otherwise in compliance with the terms of this Agreement which are fair to the Parent, any Intermediate Holdco, the Borrower and its Restricted Subsidiaries, in the reasonable determination of the board of directors of the Parent or the senior management thereof, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(9) the pledge of Capital Stock of an Unrestricted Subsidiary to its lenders to support the Indebtedness of such Unrestricted Subsidiary owed to such lenders; and

(10) transactions in which the Parent, any Intermediate Holdco, the Borrower or any of its Restricted Subsidiaries delivers to the Administrative Agent a letter from an accounting, appraisal or investment banking firm of national standing stating that such transaction is fair to the Parent, such Intermediate Holdco, the Borrower or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable to the Parent, such Intermediate Holdco, the Borrower or such Restricted Subsidiary than those that would have reasonably been obtained in a comparable transaction by the Parent, such Intermediate Holdco, the Borrower or such Restricted Subsidiary with an unrelated Person on an arm's-length basis.

7.11 Limitation on Changes in Fiscal Periods. Permit the Fiscal Year to end on a day other than December 31 or change the Borrower's method of determining fiscal quarters.

7.12 Limitation on Negative Pledge Clauses. Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of the Parent, the Borrower or any of its Class I Restricted Subsidiaries to create, incur, assume or suffer to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations or, in the case of any Guarantor, its obligations under the Guarantee and Collateral Agreement, other than:

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- (a) this Agreement and the other Loan Documents;
  - (b) the Senior Subordinated Note Indenture;
  - (c) any Senior Note Indentures;
  - (d) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby);
  - (e) in connection with any Lien permitted under Section 7.3(b), (c), (d), (f), (g), (i), (k), (m), (o), (s), (u), (v) or (w) or any document or instrument governing any such Lien, provided that such prohibition or limitation shall only be effective against the assets subject to such Lien;
  - (f) pursuant to customary restrictions and conditions contained in any agreement related to the sale of any property permitted under Section 7.5, pending the consummation of such sale, provided that such prohibition or limitation shall only be effective against the assets to be sold;
  - (g) leases, licenses and other agreements entered into in the ordinary course of business (other than for Indebtedness);
  - (h) provisions in corporate charters, bylaws, stockholders agreements, partnership agreements, limited liability company agreements and similar agreements entered into in connection with Investments permitted by Section 7.8 and negotiated in good faith and not with the purpose of avoiding the restrictions of this Section;
  - (i) restrictions on cash or other deposits or net worth imposed by customers and suppliers in the ordinary course of business;
  - (j) Digital Cinema Equipment Leases with DCIP and related agreements;
  - (k) agreements governing Liens, encumbrances and restrictions permitted under Section 7.3(aa); and
  - (l) any instruments governing Indebtedness permitted under Section 7.2(g), (r), (s), (t), (u), (v), (w), (x), (y) or (z).

In each case set forth above, notwithstanding any stated limitation on the assets or property that may be subject to such prohibition or limitation, a prohibition or limitation on a specified asset or property or group or type of assets or property may also apply to all improvements, additions and accessions thereto, assets and property affixed or appurtenant thereto, and all products and proceeds thereof, including dividends, distributions, interest and increases in respect thereof.

7.13 Limitation on Restrictions on Subsidiary Distributions. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Class I Restricted Subsidiary (or, in the case of clause (a) only, any Class II Restricted Subsidiary of the Borrower) to (a) make Restricted Payments in respect of any Capital Stock of such Subsidiary held by, or pay any Indebtedness owed to, the Borrower or any Class I Restricted Subsidiary, (b) make Investments in the Borrower or any other Class I Restricted Subsidiary or (c) transfer any of its assets to the Borrower or any other Class I Restricted Subsidiary, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions with respect to a Restricted Subsidiary imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Capital Stock or assets of such Subsidiary pending such Disposition and (iii) agreements, instruments and documents of the types described in clauses (b) through (l) of Section 7.12 (provided, that, in the case of any such type that is limited to certain assets (including Capital Stock) or Persons, the permission in this clause (iii) shall also be limited to such assets or Persons after giving effect to the final sentence of Section 7.12) and negotiated in good faith and not with the purpose of avoiding the restrictions of this Section. Notwithstanding any of the foregoing, the ability of any Class II Restricted Subsidiary to make Restricted Payments may be subject to encumbrances and restrictions imposed by agreements or instruments relating to any Non-Recourse Debt of such Class II Restricted Subsidiary.

7.14 Limitation on Lines of Business. Engage in any business other than Permitted Businesses, except to such extent as would not be material to the Borrower and its Subsidiaries taken as a whole.

7.15 Limitation on Activities of the Parent and Intermediate Holdcos. In the case of the Parent and any Intermediate Holdcos, notwithstanding anything to the contrary in this Agreement or any other Loan Document:

- (a) conduct, transact or otherwise engage in, or commit to conduct, transact or otherwise engage in, any material business operations other than those incidental to
  - (i) (A) issuances and sales of its Capital Stock and options, warrants and rights related thereto, and (B) its ownership of the Capital Stock of the Borrower or one or more Intermediate Holdcos,
  - (ii) the Indebtedness permitted under Section 7.2,
  - (iii) the ownership of intercompany Indebtedness permitted under Section 7.2,
  - (iv) the transactions permitted under Section 7.10, and
  - (v) the rights and obligations hereunder and under the other Loan Documents;
- (b) incur, create, assume or suffer to exist any Indebtedness or other material liabilities or financial obligations, except
  - (i) nonconsensual liabilities and obligations imposed by operation of law,

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- (ii) pursuant to the Loan Documents to which it is a party,
  - (iii) liabilities and obligations with respect to its Capital Stock, including dividends, redemptions and repurchases, and options, warrants and rights related thereto,
  - (iv) Indebtedness permitted under Section 7.2,
  - (v) taxes,
  - (vi) customary fees to members of its board of directors,
  - (vii) ordinary course corporate operating expenses,
  - (viii) liabilities and obligations arising out of Restricted Payments permitted under Section 7.6,
  - (ix) the transactions permitted under Section 7.10,
  - (x) liabilities and obligations arising out of operations permitted under clause (a) of this Section or ownership of assets permitted under clause (c) of this Section; or
- (c) own, lease, manage or otherwise operate any properties or assets (including cash and Cash Equivalents) other than
- (i) the ownership of shares of Capital Stock of the Borrower or one or more Intermediate Holdcos,
  - (ii) the ownership of intercompany Indebtedness permitted under Section 7.2,
  - (iii) customary minimum balances of cash and Cash Equivalents,
  - (iv) cash and Cash Equivalents pending application to an Indebtedness, liability or obligation permitted under clause (b) of this Section,
  - (v) on any date cash and Cash Equivalents pending application to ordinary course corporate operating expenses of the Parent for the two year period following such date in an amount not to exceed \$3,000,000, and
  - (vi) cash and Cash Equivalents so long as the Parent or the relevant Intermediate Holdco owning such cash and Cash Equivalents is a Guarantor and the Administrative Agent has a perfected first-priority security interest in such cash and Cash Equivalents pursuant to a customary control agreement.

7.16 Limitation on Hedge Agreements. Enter into any Hedge Agreement other than Hedge Agreements entered into in the ordinary course of business (i) to protect against changes in interest rates or to reduce overall interest costs with respect to Funded Debt of the Parent and its Subsidiaries to the extent that such Hedge Agreements have an aggregate notional amount equal to or less than an amount reasonably related to the amount of such Funded Debt, all such determinations to be made at the time of incurrence of such Hedge Agreement and (ii) to protect against changes in currency exchange rates or commodity prices and to reduce overall costs with respect to such currency exchange rates or commodity prices to the extent that such Hedge Agreements are in an aggregate notional amount equal to or less than an amount reasonably related to the exposure of the Borrower and its Subsidiaries with respect to such currencies or commodities, as applicable.

#### SECTION 8. EVENTS OF DEFAULT

8.1 Events of Default. If any of the following events shall occur and be continuing:

- (a) The Borrower shall fail to pay any principal of any Loan or Reimbursement Obligation when due in accordance with the terms hereof; or the Borrower shall fail to pay any interest on any Loan or Reimbursement Obligation, or any other amount payable hereunder or under any other Loan Document, within five days after any such interest or other amount becomes due in accordance with the terms hereof or thereof; or
- (b) Any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made or furnished; or
- (c) (i) Any Loan Party shall default in the observance or performance of any agreement contained in clause (i) or (ii) of Section 6.4(a) (with respect to the Parent and the Borrower only), Section 6.7(a) or Section 7, or (ii) an "Event of Default" under and as defined in any Mortgage shall have occurred and be continuing; or
- (d) Any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) of this Section), and such default shall continue unremedied for a period of 30 days; or
- (e) The Parent, any Intermediate Holdco, the Borrower or any of its Restricted Subsidiaries shall (i) default in making any payment of any principal of any Indebtedness (including, without limitation, any Guarantee Obligation, but excluding the Loans and Reimbursement Obligations) on the scheduled or original due date with respect thereto or, with respect to any Capital Lease Obligation, after giving effect to any grace period with respect thereto; or (ii) default in making any payment of any interest on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (iii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or due



to any action or omission by the Parent or any of its Subsidiaries any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or to become subject to a mandatory offer to purchase by the obligor thereunder or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable; provided, that a default, event or condition described in clause (i), (ii) or (iii) of this paragraph (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (i), (ii) and (iii) of this paragraph (e) shall have occurred and be continuing with respect to Indebtedness the outstanding principal amount of which exceeds in the aggregate \$25,000,000; or

(f) (i) The Parent, any Intermediate Holdco, the Borrower or any of its Restricted Subsidiaries shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Parent, any Intermediate Holdco, the Borrower or any of its Restricted Subsidiaries shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Parent, any Intermediate Holdco, the Borrower or any of its Restricted Subsidiaries any case, proceeding or other action of a nature referred to in clause (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days; or (iii) there shall be commenced against the Parent, any Intermediate Holdco, the Borrower or any of its Restricted Subsidiaries any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) the Parent, any Intermediate Holdco, the Borrower or any of its Restricted Subsidiaries shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Parent, any Intermediate Holdco, the Borrower or any of its Restricted Subsidiaries shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) (i) Any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any failure by the Borrower or any Commonly Controlled Entity to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or any failure to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan, or any Lien in favor of the PBGC or a Plan shall arise on the assets of the Borrower or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or

proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Required Lenders, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA, (v) the Borrower or any Commonly Controlled Entity shall, or in the reasonable opinion of the Required Lenders shall be likely to, incur any liability in connection with a withdrawal from, or the Insolvency, Reorganization or "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA) of, a Multiemployer Plan or (vi) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could, in the sole judgment of the Required Lenders, reasonably be expected to have a Material Adverse Effect; or

(h) One or more final judgments or decrees shall be entered against the Parent, any Intermediate Holdco, the Borrower or any of its Restricted Subsidiaries involving for the Parent, the Intermediate Holdco, the Borrower and its Restricted Subsidiaries taken as a whole a liability (not paid or fully covered by insurance as to which the relevant insurance company has not disclaimed coverage) of \$25,000,000 or more, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof; or

(i) (i) Any of the Security Documents shall cease, for any reason (other than by reason of the express release thereof pursuant to this Agreement), to be in full force and effect, and the Borrower shall not cure such event within three Business Days after notice thereof; (ii) any Loan Party shall assert that any of the Security Documents are not in full force and effect; or (iii) any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby or any Loan Party shall so assert (other than by reason of the express release thereof pursuant to this Agreement), and the Borrower shall not cure such event within three Business Days after notice thereof; provided, that a default, event or condition described in clause (i), (ii) or (iii) of this paragraph (i) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (i), (ii) and (iii) of this paragraph shall have occurred and be continuing with respect to Collateral with a fair market value which exceeds \$250,000 in the aggregate; or

(j) (i) The guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason (other than by reason of the express release thereof pursuant to this Agreement), to be in full force and effect, and the Borrower shall not cure such event within three Business Days after notice thereof; or (ii) or any Loan Party shall assert that the guarantee contained in Section 2 of the Guarantee and Collateral Agreement is not in full force and effect; or

(k) Any Change of Control shall occur; or

(l) The Senior Subordinated Notes or the guarantees thereof shall cease, for any reason, to be validly subordinated to the Obligations or the obligations of the Guarantors under the Guarantee and Collateral Agreement, as the case may be, as provided in any Senior Subordinated Note Indenture (other than in the case of the defeasance of the Senior Subordinated Notes), or any Loan Party, the trustee in respect of the Senior Subordinated Notes or the holders of at least 25% in aggregate principal amount of the Senior Subordinated Notes shall so assert;

then, and in any such event, (A) if such event is an Event of Default specified in clause (i) or (ii) of paragraph (f) above with respect to the Borrower, automatically the Commitments shall immediately terminate and the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including, without limitation, all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) shall immediately become due and payable, and (B) if such event is any other Event of Default and such Event of Default is continuing, either or both of the following actions may be taken: (i) with the consent of the Majority Revolving Credit Facility Lenders, the Administrative Agent may, or upon the request of the Majority Revolving Credit Facility Lenders, the Administrative Agent shall, by notice to the Borrower declare the Revolving Credit Commitments to be terminated forthwith, whereupon the Revolving Credit Commitments shall immediately terminate; and (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including, without limitation, all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) to be due and payable forthwith, whereupon the same shall immediately become due and payable. In the case of all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrower shall at such time deposit in a cash collateral account opened by the Administrative Agent an amount equal to the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts held in such cash collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other obligations of the Borrower hereunder and under the other Loan Documents. After all such Letters of Credit shall have expired or been fully drawn upon, all Reimbursement Obligations shall have been satisfied and all other obligations of the Borrower hereunder and under the other Loan Documents shall have been paid in full, the balance, if any, in such cash collateral account shall be returned to the Borrower within ten Business Days of such expiration (or such other Person as may be lawfully entitled thereto).

8.2 Borrower's Right to Cure. (a) Notwithstanding anything to the contrary contained in Section 8.1, in the event of any Event of Default under the covenant set forth in Section 7.1 and until the expiration of the tenth day after the date on which financial statements are required to be delivered with respect to the applicable fiscal quarter hereunder, the Parent may engage in any Permitted Equity Issuance to the Permitted Investors and apply the amount of the Net Cash Proceeds thereof to increase Consolidated EBITDA with respect to such applicable

quarter; provided that such Net Cash Proceeds applied to the cure right in this Section 8.2 (i) are actually received by the Borrower and contributed to the common equity of the Borrower (including through capital contribution of such Net Cash Proceeds directly or indirectly by the Parent to the Borrower) no later than ten days after the date on which financial statements are required to be delivered with respect to such fiscal quarter hereunder, (ii) do not increase the Applicable Amount or any other item specified in this Agreement as being increased by the amount of any contributed equity, (iii) are not deducted from Consolidated Senior Secured Debt in the determination of the Consolidated Net Senior Secured Leverage Ratio and (iv) do not exceed the aggregate amount necessary to cure such Event of Default under Section 7.1 for any applicable period. The parties hereby acknowledge that this Section 8.2 may not be relied on for purposes of calculating any financial ratios other than as applicable to Section 7.1 and shall not result in any adjustment to any amounts other than the amount of the Consolidated EBITDA referred to in the immediately preceding sentence.

(b) Notwithstanding the provisions of Section 8.2(a), (x) in each period of four fiscal quarters, there shall be at least one fiscal quarter in which no cure set forth in Section 8.2(a) is made and (y) in each period of eight fiscal quarters, there shall be at least four consecutive fiscal quarters in which no cure set forth in Section 8.2(a) is made.

## SECTION 9. THE AGENTS

9.1 Appointment. Each Lender hereby irrevocably designates and appoints the Agents as the agents of such Lender under this Agreement and the other Loan Documents, and each Lender irrevocably authorizes each Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to such Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against any Agent.

9.2 Delegation of Duties. Each Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

9.3 Exculpatory Provisions. Neither any Agent nor any of its officers, directors, employees, agents, advisors, attorneys-in-fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document

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or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party.

9.4 Reliance by Agents. Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Loan Parties), independent accountants and other experts selected by such Agent. The Agents may deem and treat the payee of any Note as the owner thereof for all purposes unless such Note shall have been transferred in accordance with Section 10.6 and all actions required by such Section in connection with such transfer shall have been taken. Each Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement) as it deems appropriate or it shall first be indemnified to its satisfaction by such Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

9.5 Notice of Default. No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless such Agent shall have received notice from a Lender, the Parent or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that the Administrative Agent shall receive such a notice, the Administrative Agent shall give notice thereof to the Lenders or if such notice is from a Lender, to the Borrower. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

9.6 Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that neither any of the Agents nor any of their respective officers, directors, employees, agents, advisors, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, no Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of such Agent or any of its officers, directors, employees, agents, advisors, attorneys-in-fact or affiliates.

9.7 Indemnification. The Lenders agree to indemnify each Agent and its officers, directors, employees, affiliates, agents, advisors and controlling persons (each, an "Agent Indemnitee") in its capacity as such (to the extent not reimbursed by the Borrower or any Guarantor and without limiting the obligation of the Borrower or any Guarantor to do so), ratably according to their respective Aggregate Exposure Percentages in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Aggregate Exposure Percentages immediately prior to such date), for, and to save each Agent harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (including, without limitation, at any time following the payment of the Loans) be imposed on, incurred by or asserted against such Agent Indemnitee in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent Indemnitee under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent Indemnitee's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

9.8 Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Agent were not an Agent. With respect to its Loans made or renewed by it and with respect to any Letter of Credit issued or participated in by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

9.9 Successor Agents. The Administrative Agent may resign as Administrative Agent upon ten days' notice to the Lenders and the Borrower. If the Administrative Agent shall resign as Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall (unless an Event of Default under Section 8.1(a) or Section 8.1(f) with respect to the Borrower shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Loans. If no successor agent has accepted appointment as Administrative Agent by the date that is ten days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. The Syndication Agent may, at any time, by notice to the Lenders and the Administrative Agent, resign as Syndication Agent hereunder, whereupon the duties, rights, obligations and responsibilities of the Syndication Agent, if any, hereunder shall automatically be assumed by, and inure to the benefit of, the Administrative Agent, without any further act by the Syndication Agent, the Administrative Agent or any Lender. After any retiring Agent's resignation as Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement and the other Loan Documents.

9.10 Authorization to Release Liens and Guarantees. The Administrative Agent is hereby irrevocably authorized by each of the Lenders to effect any release of Liens or guarantee obligations contemplated by Section 10.15.

9.11 The Agents. Other than the Administrative Agent, none of the Agents, in their respective capacities as such, shall have any duties or responsibilities, or incur any liability, under this Agreement and the other Loan Documents.

#### SECTION 10. MISCELLANEOUS

10.1 Amendments and Waivers. Neither this Agreement or any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1. The Required Lenders and each Loan Party party to the relevant Loan Document may, or (with the written consent of the Required Lenders) the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (a) enter into written amendments, supplements or modifications hereto and to the other Loan Documents (including amendments and restatements hereof or thereof) for

the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (b) waive, on such terms and conditions as may be specified in the instrument of waiver, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall:

(i) forgive or reduce the principal amount or extend the final scheduled date of maturity of any Loan or Reimbursement Obligation, extend the scheduled date of any amortization payment in respect of any Term Loan, reduce the stated rate of any interest or fee payable hereunder (except (x) in connection with the waiver of applicability of any post-default increase in interest rates (which waiver shall be effective with the consent of the Majority Facility Lenders of each adversely affected Facility) and (y) that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or fees for purposes of this clause (i)) or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Commitment of any Lender, in each case without the consent of each Lender directly affected thereby;

(ii) amend, modify or waive any provision of this Section or reduce any percentage specified in the definition of Required Lenders or Required Prepayment Lenders, consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release all or substantially all of the Guarantors from their guarantee obligations under the Guarantee and Collateral Agreement, in each case without the consent of all Lenders;

(iii) amend, modify or waive any condition precedent to any extension of credit under the Revolving Credit Facility set forth in Section 5.2 (including, without limitation, the waiver of an existing Default or Event of Default required to be waived in order for such extension of credit to be made) without the consent of the Majority Revolving Credit Facility Lenders;

(iv) reduce the percentage specified in the definition of Majority Facility Lenders with respect to any Facility without the written consent of all Lenders under such Facility;

(v) amend, modify or waive any provision of Section 9 or any other provision of any Loan Document directly affecting the rights, obligations or duties of any Agent without the consent of such Agent;

(vi) amend, modify or waive any provision of Section 2.16 without the consent of each Lender directly affected thereby;



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- (vii) amend, modify or waive any provision of Section 3 without the consent of the Issuing Lender;
  - (viii) amend or modify Section 10.6 to add any additional consent requirements necessary to effect any assignment or participation under such Section (other than the consent of the Borrower) without the consent of each Lender;
  - (ix) amend, modify or waive any provision of Section 2.10 without the consent of the Required Prepayment Lenders; or
  - (x) amend Section 10.6(g) except in the manner set forth in the last sentence thereof.

In addition to the amendments described above, and notwithstanding anything in this Section 10.1 to the contrary, the Peso Subfacility Amendments may be effected in accordance with the provisions of Section 2.23.

Any waiver, amendment, supplement or modification effected in accordance with this Section 10.1 shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Agents and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Agents shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Any such waiver, amendment, supplement or modification shall be effected by a written instrument signed by the parties required to sign pursuant to the foregoing provisions of this Section; provided, that delivery of an executed signature page of any such instrument by facsimile transmission shall be effective as delivery of a manually executed counterpart thereof.

For the avoidance of doubt, this Agreement and any other Loan Document may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and each Loan Party to each relevant Loan Document (x) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof (collectively, the "Additional Extensions of Credit") to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and Revolving Extensions of Credit and the accrued interest and fees in respect thereof and (y) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders, Required Prepayment Lenders, the Majority Facility Lenders and Majority Revolving Facility Lenders; provided, however, that no such amendment shall permit the Additional Extensions of Credit to share ratably with (except pursuant to the Peso Subfacility Amendments) or with preference to the Loans in the application of mandatory prepayments without the consent of the Required Prepayment Lenders (prior to giving effect to clause (y)).

In addition, notwithstanding the foregoing, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the relevant Replacement Term Loans (as defined below), and no consent of any other Person shall be required in connection with any such amendment, to permit the refinancing, replacement or modification of all outstanding Term Loans ("Replaced Term Loans") with a replacement term loan tranche hereunder ("Replacement Term Loans"), provided that (a) the aggregate principal amount of such Replacement Term Loans shall not exceed the aggregate principal amount of such Replaced Term Loans, (b) if such refinancing, replacement or modification is consummated prior to the first anniversary of the Restatement Closing Date and the Applicable Margin for such Replacement Term Loans shall be higher than the Applicable Margin for such Replaced Term Loans, then the fifth sentence of Section 2.9(a) shall apply, and (c) the weighted average life to maturity of such Replacement Term Loans shall not be shorter than the weighted average life to maturity of such Replaced Term Loans at the time of such refinancing.

Furthermore, notwithstanding the foregoing, the Administrative Agent, with the consent of the Borrower, may amend, modify or supplement any Loan Document without the consent of any Lender or the Required Lenders in order to correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error or other manifest error in any Loan Document.

10.2 Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received, addressed (a) in the case of the Parent, the Borrower and the Agents, as follows and (b) in the case of the Lenders, as set forth in an administrative questionnaire delivered to the Administrative Agent or, in the case of a Lender which becomes a party to this Agreement pursuant to an Assignment and Assumption, in such Assignment and Assumption or (c) in the case of any party, to such other address as such party may hereafter notify to the other parties hereto:

The Parent:	Cinemark Holdings, Inc. 3900 Dallas Parkway Suite 500 Plano, Texas 75093 Attention: Robert Copple, Chief Financial Officer Telephone: (972) 665-1000 Facsimile: (972) 665-1004
with a copy to:	Attention: Michael Cavalier, Senior VP-General Counsel Telephone: (972) 665-1000 Facsimile: (972) 665-1004
The Borrower:	c/o the Parent

The Administrative Agent:

Barclays Bank PLC  
Americas Loan Operations  
70 Hudson St. 10th Floor  
Jersey City, NJ 07302  
Attention: Patrick Kerner  
Telecopy no: (201) 499-5040  
E-Mail Address: patrick.kerner@barcap.com

Issuing Lender:

As notified by such Issuing Lender to the Administrative Agent and the Borrower

provided that any notice, request or demand to or upon any Agent, any Issuing Lender or any Lender shall not be effective until received.

Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

10.3 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of any Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.4 Survival of Representations and Warranties. All representations and warranties made herein, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

10.5 Payment of Expenses and Taxes. The Borrower agrees (a) to pay or reimburse the Agents for all their reasonable out-of-pocket costs and expenses incurred in connection with the syndication of the Facilities (other than fees payable to syndicate members) and the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including, without limitation, the reasonable fees and disbursements and other charges of counsel to the Administrative Agent (but limited to one counsel to the Administrative Agent), filing and recording fees and expenses and the charges of Intralinks, (b) to pay or reimburse each Lender and the Agents for all their out-of-pocket costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any other documents prepared in connection

herewith or therewith, including, without limitation, the fees and disbursements of counsel (including the allocated fees and disbursements and other charges of in-house counsel) to each Lender and of counsel to the Agents (but limited to one counsel to the Administrative Agent, one counsel to the Lenders, appropriate local counsel as may be necessary and, in the case of a conflict of interest, additional legal counsel as may be necessary), (c) to pay, indemnify, or reimburse each Lender and the Agents for, and hold each Lender, the Issuing Lender and the Agents harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay caused by the Borrower in paying, Other Taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents, and (d) to pay, defend, indemnify or reimburse each Lender, the Issuing Lender, each Agent, their respective affiliates, and their respective officers, directors, trustees, employees, advisors, agents and controlling persons (each, an "Indemnitee") for, and hold each Indemnitee harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents and any such other documents, including, without limitation, any claim, litigation, investigation or proceeding regardless of whether any Indemnitee is a party thereto and whether or not the same are bought by the Borrower, its equity holders, affiliates or creditors or any other person, including any of the foregoing relating to the use of proceeds of the Loans or the violation of, noncompliance with or liability under, any Environmental Law applicable or allegedly applicable to the Parent, the Borrower, any of its Subsidiaries or any of their operations or any property at any time owned, leased, or in any way used by any of such parties and the fees and disbursements and other charges of legal counsel in connection with claims, actions or proceedings by any Indemnitee against the Borrower hereunder (all the foregoing in this clause (d), collectively, the "Indemnified Liabilities"), provided, that the Borrower shall have no obligation hereunder to any Indemnitee with respect to Indemnified Liabilities (i) to the extent such Indemnified Liabilities are found by a final, nonappealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or (ii) arising from claims asserted by another Indemnitee against such Indemnitee, provided, further, that this Section 10.5(d) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim. The Borrower shall have the right to undertake, conduct and control through counsel of its own choosing (which counsel shall be acceptable to the applicable Indemnitee acting reasonably), the conduct and settlement of claims with respect to the related Indemnified Liabilities, and such Indemnitee shall cooperate with the Borrower in connection therewith; provided that the Borrower shall permit such Indemnitee to participate in such conduct and settlement through counsel chosen by such Indemnitee. Notwithstanding the foregoing, each Indemnitee shall have the right to employ its own counsel and the reasonable fees and expenses of such counsel shall be at the Borrower's cost and expense if such Indemnitee reasonably determines that (i) the Borrower's counsel is not defending any claim or proceeding in a manner reasonably acceptable to such Indemnitee or (ii) the interest of the Borrower and such Indemnitee have become adverse in any such claim or cause of action, provided, however, that in such event, the Borrower shall only be liable for the reasonable legal expenses of one counsel for all such Indemnitees. If

clause (ii) of the immediately preceding sentence is applicable, at the option of the applicable Indemnitee, its attorneys shall control the resolution of any such claim with respect to the related Indemnified Liabilities. The Borrower shall not, without the prior written consent of each Indemnitee affected thereby, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification may be sought hereunder (whether or not such Indemnitee is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (a) includes an unconditional release of such Indemnitee from all liability arising out of such action or claim, (b) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of such Indemnitee and (c) does not require such Indemnitee to pay any form of consideration to any party or parties (including, without limitation, the payment of money) in connection therewith. Without limiting the foregoing, and to the extent permitted by applicable law, the Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries so to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee until the date on which all Obligations (other than obligations in respect of any Specified Hedge Agreement) have been paid in full, all Commitments have terminated or expired and no Letter of Credit shall be outstanding. Notwithstanding any other provision of this Section, the Borrower shall have no obligation hereunder to any Indemnitee for any environmental claims arising from actions taken by such Indemnitee with respect to any Property after the exercise of remedies by such Indemnitee with respect to such Property. All amounts due under this Section shall be payable not later than 30 days after written demand therefor supported by customary documentation. Statements payable by the Borrower pursuant to this Section shall be submitted to General Counsel (Telephone No. (972) 665-1000) (Fax No. (972) 665-1004), at the address of the Borrower set forth in Section 10.2, or to such other Person or address as may be hereafter designated by the Borrower in a notice to the Administrative Agent. The agreements in this Section shall survive repayment of the Loans and all other amounts payable hereunder.

No Indemnitee or any of the other parties hereto shall be liable to any other party hereto for any damages arising from the use by unauthorized Persons of information or other materials sent through electronic, telecommunications or other information transmission systems that are intercepted by such Persons (except to the extent any such damages are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnitee) or for any special, indirect, exemplary, consequential or punitive damages in connection with the Facilities.

**10.6 Successors and Assigns; Participations and Assignments.** (a) This Agreement shall be binding upon and inure to the benefit of the Parent, the Borrower, the Lenders, the Agents, all future holders of the Loans and their respective successors and assigns, except that the Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Agents and each Lender.

(b) Any Lender may, without the consent of the Borrower, in accordance with applicable law, at any time sell to one or more banks, financial institutions or other entities (each, a "Participant") participating interests in any Loan owing to such Lender, any Commitment of such Lender or any other interest of such Lender hereunder and under the other Loan Documents. In the event of any such sale by a Lender of a participating interest to a Participant, such Lender's obligations under this Agreement to the other parties to this Agreement shall remain unchanged, such Lender shall remain solely responsible for the performance thereof, such Lender shall remain the holder of any such Loan for all purposes under this Agreement and the other Loan Documents, and the Borrower and the Agents shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. In no event shall any Participant under any such participation have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by any Loan Party therefrom, except to the extent that such amendment, waiver or consent would require the consent of all Lenders pursuant to Section 10.1. The Borrower agrees that if amounts outstanding under this Agreement and the Loans are due or unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall, to the maximum extent permitted by applicable law, be deemed to have the right of setoff in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement, provided that, in purchasing such participating interest, such Participant shall be deemed to have agreed to share with the Lenders the proceeds thereof as provided in Section 10.7(a) as fully as if such Participant were a Lender hereunder. The Borrower and each Lender also agree that each Participant shall be entitled to the benefits of Sections 2.17, 2.18 and 2.19 with respect to its participation in the Commitments and the Loans outstanding from time to time as if such Participant were a Lender; provided that, in the case of Section 2.18, such Participant shall have complied with the requirements of said Section, and provided, further, that no Participant shall be entitled to receive any greater amount pursuant to any such Section than the transferor Lender would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lender to such Participant had no such transfer occurred, except to the extent such entitlement to receive a greater amount results from the adoption of, or a change in any Requirement of Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for tax purposes), maintain a register in the United States on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments or other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that any such Commitment or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(c) Any Lender (an "Assignor") may, in accordance with applicable law, at any time and from time to time assign to any Lender or any Affiliate or Related Fund thereof or, with the consent of (i) the Administrative Agent and so long as no Default or Event of Default has occurred and is continuing, the Borrower (which, in each case, shall not be unreasonably withheld or delayed) (provided that no such consent need be obtained with respect to any assignment of Term Loans, unless such assignment is to a Person that is a motion picture exhibitor or an Affiliate or related entity of a motion picture exhibitor, in which case such assignment shall require the consent of the Borrower), and (ii) in the case of any assignment of the Revolving Credit Commitments, the Issuing Lenders (which consent shall not be unreasonably withheld), to an additional bank, financial institution or other entity (an "Assignee") all or any part of its rights and obligations under this Agreement pursuant to an Assignment and Assumption, substantially in the form of Exhibit E, executed by such Assignee and such Assignor (and, where the consent of the Borrower, the Administrative Agent or the Issuing Lenders is required pursuant to the foregoing provisions, by the Borrower and such other Persons) and delivered to the Administrative Agent for its acceptance and recording in the Register; provided that no such assignment to an Assignee (other than any Lender or any affiliate or Related Fund thereof) shall be in an aggregate principal amount of less than \$5,000,000, in the case of any assignment of Revolving Credit Commitments, and \$1,000,000, in the case of any assignment of Term Loans (other than in the case of an assignment of all of a Lender's interests under this Agreement), unless otherwise agreed by the Borrower and the Administrative Agent and, after giving effect to such assignment, the assigning Lender (if it shall retain any Revolving Credit Commitment or Loans) shall have Commitments and Loans aggregating at least \$5,000,000, in the case of Revolving Credit Commitments, and \$1,000,000, in the case of the Term Loans. Any such assignment need not be ratable as among the Facilities. Upon such execution, delivery, acceptance and recording, from and after the effective date determined pursuant to such Assignment and Assumption, (x) the Assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Assumption, have the rights and obligations of a Lender hereunder with Commitments and/or Loans as set forth therein, and (y) the Assignor thereunder shall, to the extent provided in such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of an Assignor's rights and obligations under this Agreement, such Assignor shall cease to be a party hereto, except as to Sections 2.17, 2.18 and 10.5 in respect of the period prior to such effective date and Section 10.14). Notwithstanding any provision of this Section, the consent of the Borrower shall not be required for any assignment that occurs at any time when any Event of Default shall have occurred and be continuing. For purposes of the minimum assignment amounts set forth in this paragraph, multiple assignments to or by two or more Related Funds shall be aggregated and for purposes of the minimum hold amounts, the Commitments and Loans of Related Funds shall be aggregated.

(d) The Administrative Agent shall, on behalf of the Borrower, maintain at its address referred to in Section 10.2 a copy of each Assignment and Assumption delivered to it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Loans owing to, each Lender from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, each Agent and the Lenders shall treat each Person whose name is recorded in the Register as the owner of the Loans and any Notes evidencing such Loans recorded therein for all purposes of this Agreement. Any assignment of any Loan, whether or not evidenced by a Note, shall be effective only upon appropriate entries with respect thereto being made in the Register. Any assignment or transfer of all or part of a Loan evidenced by a Note shall be registered on the

Register only upon surrender for registration of assignment or transfer of the Note evidencing such Loan, accompanied by a duly executed Assignment and Assumption; thereupon one or more new Notes in the same aggregate principal amount shall be issued to the designated Assignee, and the old Notes shall be returned by the Administrative Agent to the Borrower marked "canceled." The Register shall be available for inspection by the Borrower or any Lender (with respect to any entry relating to such Lender's Loans) at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of an Assignment and Assumption executed by an Assignor and an Assignee (and, in any case where the consent of any other Person is required by Section 10.6(c), by each such other Person) together with payment to the Administrative Agent of a registration and processing fee of \$3,500 (treating multiple, simultaneous assignments by or to two or more Related Funds as a single assignment) (except that no such registration and processing fee shall be payable in connection with an assignment by or to a Barclays Entity), and the acceptance of the Assignee's completed administrative questionnaire (unless the Assignee shall already be a Lender hereunder) the Administrative Agent shall (i) promptly accept such Assignment and Assumption and (ii) on the effective date determined pursuant thereto record the information contained therein in the Register and give notice of such acceptance and recordation to the Borrower. On or prior to such effective date, the Borrower, at its own expense, upon request, shall execute and deliver to the Administrative Agent (in exchange for the Revolving Credit Note and/or applicable Term Notes, as the case may be, of the assigning Lender) a new Revolving Credit Note and/or applicable Term Notes, as the case may be, to the order of such Assignee in an amount equal to the Revolving Credit Commitment and/or applicable Term Loans, as the case may be, assumed or acquired by it pursuant to such Assignment and Assumption and, if the Assignor has retained a Revolving Credit Commitment and/or Term Loans, as the case may be, upon request, a new Revolving Credit Note and/or Term Notes, as the case may be, to the order of the Assignor in an amount equal to the Revolving Credit Commitment and/or applicable Term Loans, as the case may be, retained by it hereunder. Such new Note or Notes shall be dated the Restatement Closing Date and shall otherwise be in the form of the Note or Notes replaced thereby. In the event that the Administrative Agent has received a Revolving Credit Note and/or a Term Note, as the case may be, from the assigning Lender, the Administrative Agent shall promptly return to the Borrower such Note and/or Notes for cancellation.

(f) For avoidance of doubt, the parties to this Agreement acknowledge that the provisions of this Section concerning assignments of Loans and Notes relate only to absolute assignments and that such provisions do not prohibit assignments creating security interests in Loans and Notes, including, without limitation, any pledge or assignment by a Lender of any Loan or Note to any Federal Reserve Bank in accordance with applicable law.

(g) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPC"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of



such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other indebtedness of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any state thereof. In addition, notwithstanding anything to the contrary in this Section 10.6(g), any SPC may (A) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender, or with the prior written consent of the Borrower and the Administrative Agent (which consent shall not be unreasonably withheld) to any financial institutions providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans, and (B) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC; provided that non-public information with respect to the Borrower may be disclosed only with the Borrower's consent which will not be unreasonably withheld. This paragraph (g) may not be amended without the written consent of the Required Lenders, the Borrower and any SPC with Loans outstanding at the time of such proposed amendment.

10.7 Adjustments; Set-off. (a) Except to the extent that this Agreement or a court order expressly provides for payments to be allocated to a particular Lender or to the Lenders under a particular Facility, if any Lender (a "Benefitted Lender") shall at any time receive any payment of all or part of the Obligations owing to it (other than in connection with an assignment made pursuant to Section 10.6 or a prepayment pursuant to Section 2.25), or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 8.1(f), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of such other Lender's Obligations, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Obligations, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) In addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to the Parent or the Borrower, any such notice being expressly waived by the Parent and the Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by the Parent or the Borrower hereunder (whether at the stated maturity, by acceleration or otherwise), to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final, but excluding deposits held by the Parent or the Borrower in a

fiduciary capacity for others), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch, agency or bank affiliate thereof to or for the credit or the account of the Parent or the Borrower, as the case may be; provided that if any Defaulting Lender shall exercise any such right of setoff, (i) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of this Agreement and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Lender and the Lenders and (ii) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the obligations owing to such Defaulting Lender as to which it exercised such right of set-off. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such setoff and application made by such Lender, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.8 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

10.9 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.10 Integration. This Agreement and the other Loan Documents represent the entire agreement of the Parent, the Borrower, the Agents and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents. This Agreement supersedes and terminates the engagement letter among the Borrower and the Agents (other than any provisions relating to obligations of the Borrower in respect of syndication of the Facilities) but not the related fee letter.

10.11 **GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

10.12 Submission To Jurisdiction; Waivers. Each of the Parent and the Borrower hereby irrevocably and unconditionally:

(a) submits for itself and its Property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof; provided, that nothing contained herein or in any other Loan Document will prevent any Lender or the Administrative Agent from bringing any action to enforce any award or judgment or exercise any right under the Security Documents or against any Collateral or any other property of any Loan Party in any other forum in which jurisdiction can be established;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Parent or the Borrower, as the case may be at its address set forth in Section 10.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) together with each Lender, each Agent waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, indirect, exemplary, punitive or consequential damages.

10.13 Acknowledgments. Each of the Parent and the Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) neither any Agent nor any Lender has any fiduciary relationship with or duty to the Parent or the Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Agents and the Lenders, on one hand, and the Parent and the Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Agents and the Lenders or among the Parent, the Borrower and the Lenders.

10.14 Confidentiality. Each of the Agents, the Lenders and the other Credit Parties agrees to keep confidential all non-public information provided to it by any Loan Party pursuant to this Agreement that is designated by such Loan Party as confidential; provided that nothing herein shall prevent any Agent or any Lender from disclosing any such information (a) to any Agent, any other Lender or any affiliate of any thereof, (b) to any Participant or Assignee (each, a "Transferee") or prospective Transferee that has agreed to comply with the provisions of this Section, (c) to any of its employees, directors, agents, attorneys, accountants and other professional advisors who will be advised of such confidentiality, (d) to any financial institution that is a creditor of such Agent or Lender or a direct or indirect contractual counterparty of such Agent or Lender in swap agreements or such contractual counterparty's professional advisor (so long as such creditor or contractual counterparty or professional advisor to such contractual counterparty has agreed to be bound by the provisions of this Section), (e) upon the request or demand of any Governmental Authority having jurisdiction over it, (f) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law, (g) in connection with any litigation or similar proceeding, (h) that has been publicly disclosed other than in breach of this Section, (i) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender, (j) in connection with the exercise of any remedy hereunder or under any other Loan Document or (k) if agreed by the Borrower in its sole discretion to any other Person; provided, however, with respect to clauses (e), (f) and (g), each of the Agents and Lenders agrees to give the Parent and Borrower prompt notice of any request for such confidential information so as to permit the Parent or the Borrower to seek a protective order or similar remedy or cause such information to be accorded confidential treatment. Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all Persons, without limitation of any kind, the structure and tax aspects of the transactions contemplated by this Agreement, and all materials of any kind (including opinions or other tax analyses) related to such structure and tax aspects. Further, each party hereto acknowledges that it has no proprietary rights to any tax matter or tax idea related to the transactions contemplated by this Agreement.

10.15 Release of Collateral and Guarantee Obligations

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of the Borrower in connection with any Disposition of Property permitted by the Loan Documents, the Administrative Agent shall (without notice to, or vote or consent of, any Lender, any Agent or any Qualified Counterparty) take such actions as shall be required to release its security interest in any Collateral being Disposed of in such Disposition, and to release any guarantee obligations under any Loan Document of any Person being Disposed of in such Disposition, to the extent necessary to permit consummation of such Disposition in accordance with the Loan Documents.

(b) Notwithstanding any other provision of this Agreement or any other Loan Document, the Borrower may request, and the Administrative Agent shall (without notice to, or vote or consent of, any Lender, any Agent or any Qualified Counterparty) grant, a release of any specific parcel of real property Collateral if (i) (A) such release is in connection with a grant by the Borrower or a Guarantor of additional real property Collateral of similar or greater value (valued in accordance with Schedule 6.9(b)-1; such value to be demonstrated to the reasonable satisfaction of the Administrative Agent) and (B) immediately after giving effect to such Collateral substitution, no Default or Event of Default shall have occurred and be continuing or (ii) such parcel represents an adjacent parcel of real property not necessary in the business of the Borrower or any Class I Restricted Subsidiary which has been separated from another parcel of real property of the Borrower or a Class I Restricted Subsidiary by means of subdivision and replatting.

(c) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (other than obligations in respect of any Specified Hedge Agreement) have been paid in full, all Commitments have terminated or expired and no Letter of Credit shall be outstanding, upon request of the Borrower, the Administrative Agent shall (without notice to, or vote or consent of, any Lender, any Agent, or any Person that is a party to any Specified Hedge Agreement) take such actions as shall be required to release its security interest in all Collateral, and to release all guarantee obligations under any Loan Document, whether or not on the date of such release there may be outstanding Obligations in respect of Specified Hedge Agreements. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(d) The Administrative Agent shall (without notice to, or vote or consent of, any Lender, any Agent or any Qualified Counterparty) release its security interest in Collateral as provided in the Guarantee and Collateral Agreement, including Section 8.15 thereof.

10.16 Accounting Changes. In the event that any "Accounting Change" (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then the Borrower and the Administrative Agent agree to enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating the Borrower's financial condition shall be the same after such Accounting Change as if such Accounting Change had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Change had not occurred. "Accounting Change" refers to any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (including the Emerging Issues Task Force thereof) or, if applicable, the SEC or in the interpretation or application thereof by independent certified public accountants of nationally recognized standing.

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10.17 **WAIVERS OF JURY TRIAL.** THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

10.18 USA Patriot Act. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act.

10.19 No Novation. The terms and conditions of the Existing Credit Agreement are amended as set forth in, and restated in their entirety and superseded by, this Agreement. Nothing in this Agreement shall be deemed to be a novation of any of the Obligations as defined in the Existing Credit Agreement. Notwithstanding any provision of this Agreement or any other Loan Document or instrument executed in connection herewith, the execution and delivery of this Agreement and the incurrence of Obligations hereunder shall be in substitution for, but not in payment of, the Obligations owed by the Loan Parties under the Existing Credit Agreement. From and after the Restatement Closing Date, each reference to the "Agreement", "Credit Agreement" or other reference originally applicable to the Existing Credit Agreement contained in any Loan Document shall be a reference to this Agreement, as amended, supplemented, restated or otherwise modified from time to time.

10.20 Designated Senior Debt. The Borrower hereby designates all "Senior Debt" (as defined in the Senior Subordinated Note Indenture as in effect on the Restatement Closing Date) under this Agreement as "Designated Senior Debt" for purposes of such Senior Subordinated Note Indenture.

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

CINEMARK HOLDINGS, INC.

By: /s/ Michael Cavalier  
Name: Michael Cavalier  
Title: Senior Vice President-General Counsel

CINEMARK USA, INC.

By: /s/ Michael Cavalier  
Name: Michael Cavalier  
Title: Senior Vice President-General Counsel

Amended and Restated Credit Agreement Signature Page

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BARCLAYS BANK PLC, as Administrative Agent  
and Lender

By:           /s/ Craig J. Malloy          

Name: Craig J. Malloy

Title: Director

Amended and Restated Credit Agreement Signature Page



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Deutsche Bank Trust Company Americas, as a  
Revolving Credit Lender

By:           /s/ Mary Kay Coyle          

Name: Mary Kay Coyle

Title: Managing Director

By:           /s/ Omayra Laucella          

Name: Omayra Laucella

Title: Director

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MORGAN STANLEY SENIOR FUNDING, INC.,  
as Revolving Credit Lender

By: /s/ Nehal Abdel Hakim  
Name: Nehal Abdel Hakim  
Title: Authorized Signatory

Amended and Restated Credit Agreement Signature Page

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WEBSTER BANK, N.A., as Revolving Credit Lender

By: /s/ Carol A. Pirek

Name: Carol A. Pirek

Title: Vice President

Amended and Restated Credit Agreement Signature Page

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Wells Fargo Bank, N.A., as a Revolving Credit Lender

By: /s/ Tray Jones

Name: Tray Jones

Title: Vice President

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## PRICING GRID FOR REVOLVING CREDIT LOANS AND COMMITMENT FEE RATE

Consolidated Net Senior Secured Leverage Ratio	Applicable Margin for Revolving Credit Loans		Commitment Fee Rate
	Eurodollar Loans	Base Rate Loans	
> 2.75 to 1.00	2.75%	1.75%	0.500%
≤ 2.75 to 1.00 and > 2.25 to 1.00	2.50%	1.50%	0.375%
≤ 2.25 to 1.00 and > 1.75 to 1.00	2.25%	1.25%	0.375%
≤ 1.75 to 1.00	2.00%	1.00%	0.250%

Changes in the Applicable Margin resulting from changes in the Consolidated Net Senior Secured Leverage Ratio shall become effective on the date (the "Adjustment Date") on which financial statements are delivered to the Lenders pursuant to Section 6.1 (but in any event not later than the date such financial statements are due pursuant to Section 6.1) and shall remain in effect until the next change to be effected pursuant to this paragraph. If any financial statements referred to above are not delivered within the time periods specified above, then, until such financial statements are delivered, the Consolidated Net Senior Secured Leverage Ratio as at the end of the fiscal period that would have been covered thereby shall for the purposes of this definition be deemed to be greater than 2.75 to 1.00. In addition, at all times while an Event of Default shall have occurred and be continuing, the Consolidated Net Senior Secured Leverage Ratio shall for the purposes of this Pricing Grid be deemed to be greater than 2.75 to 1.00. Each determination of the Consolidated Net Senior Secured Leverage Ratio pursuant to this Pricing Grid shall be made as at the last day of any period of four consecutive fiscal quarters of the Borrower.