

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

---

**FORM 8-K**

---

**Current Report**

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

**Date of Report (Date of earliest event reported): October 2, 2007**



**Charter Communications, Inc.**

*(Exact name of registrant as specified in its charter)*

**Delaware**

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

**000-27927**

*(Commission File Number)*

**43-1857213**

*(I.R.S. Employer Identification Number)*

**12405 Powerscourt Drive**

**St. Louis, Missouri 63131**

*(Address of principal executive offices including zip code)*

**(314) 965-0555**

*(Registrant's telephone number, including area code)*

**Not Applicable**

*(Former name or former address, if changed since last report)*

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

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

## **ITEM 1.01. ENTRY INTO MATERIAL DEFINITIVE AGREEMENT.**

On October 2, 2007, Charter Communications, Inc. (“Charter”) announced the closing of the offer by its subsidiary, Charter Communications Holding Company, LLC (“Charter Holdco”) for \$364 million of Charter’s outstanding 5.875% Convertible Senior Notes due 2009 (the “Existing Convertible Notes”) in exchange for \$479 million of Charter’s new 6.50% Convertible Senior Notes due 2027 (the “New Convertible Notes”).

### The Indenture

The New Convertible Notes were issued pursuant to the indenture, dated as of October 2, 2007, among Charter and The Bank of New York Trust Company, N.A., as trustee (the “Indenture”). The New Convertible Notes bear interest at 6.50% per annum and will mature on October 1, 2027, subject to earlier redemption at the option of Charter or repurchase at the option of the holders. Interest is payable October 1 and March 1 of each year. The New Convertible Notes are the unsecured and unsubordinated obligations of Charter and rank, in right of payment, the same as all of Charter’s existing and future senior unsecured indebtedness, including the Existing Convertible Notes. The New Convertible Notes have an initial conversion price of \$3.41, and initial conversion rate of 293.3868 per \$1,000 principal amount of New Convertible Notes. The New Convertible Notes provide the holders with the right to require Charter to repurchase some or all of the New Convertible Notes for cash on October 1, 2012, 2017 and 2022 at a repurchase price equal to the principal amount plus accrued interest. The Indenture restricts the ability of Charter to consolidate, merge or sell all or substantially all assets. However, such covenant is subject to a number of important qualifications and exceptions as described in the Indenture.

The Indenture is attached hereto as Exhibit 4.1.

### The Amended and Restated Share Lending Agreement

On October 2, 2007, in connection with the Exchange Offer, Charter and Citigroup Global Markets Limited (“CGML”) entered into an Amended and Restated Share Lending Agreement, (the “Amended and Restated Share Lending Agreement”), which allowed the shares of Charter’s Class A common stock lent by Charter to CGML to remain outstanding through the maturity of the New Convertible Notes.

The Amended and Restated Share Lending Agreement is attached hereto as Exhibit 10.1.

### The Mirror Note and the Amended and Restated Unit Lending Agreement

In connection with the issuance of the New Convertible Notes, Charter entered into certain agreements with Charter Holdco to provide for the issuance of \$479 million original principal amount of a 6.50% Mirror Convertible Senior Note due 2027 of Charter Holdco (the “Mirror Note”) to Charter. These agreements were entered into in order to facilitate compliance with the certificate of incorporation of Charter and the governing documents of Charter Holdco regarding the required issuance of mirror securities by Charter Holdco. The terms of the Mirror Note mirror the terms of the New Convertible Notes. Additionally, on October 2, 2007, Charter and Charter Holdco, entered into an Amended and Restated Unit Lending Agreement (the “Amended and Restated Unit Lending Agreement”), that will mirror the terms of the Amended and Restated Share Lending Agreement. The Mirror Note and the Unit Lending Amendment are attached hereto as Exhibit 10.2 and Exhibit 10.3, respectively.

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

The information in Item 1.01 of this Form 8-K is hereby incorporated by reference to this Item 2.03.

---

**ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.**

<b>Exhibit Number</b>	<b>Description</b>
Exhibit 4.1	Indenture relating to the 6.50% Convertible Senior Notes due 2027, dated as of October 2, 2007, between Charter Communications, Inc., as Issuer, and The Bank of New York Trust Company, N.A., as Trustee. *
Exhibit 10.1	Amended and Restated Share Lending Agreement, dated October 2, 2007, between Charter Communications, Inc., Citigroup Global Markets Limited, through Citigroup Global Markets, Inc.*
Exhibit 10.2	Amended and Restated Unit Lending Agreement, dated as of October 2, 2007, between Charter Communications Holding Company, LLC as Lender and Charter Communications, Inc. as Borrower.*
Exhibit 10.3	6.50% Mirror Convertible Senior Note due 2027 in the principal amount of \$479 million, dated as of October 2, 2007, made by Charter Communications Holding Company, LLC in favor of Charter Communications, Inc.*

\* filed herewith

---

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, Charter Communications, Inc. has duly caused this Current Report to be signed on its behalf by the undersigned hereunto duly authorized.

**CHARTER COMMUNICATIONS, INC.**  
**Registrant**

Dated: October 5, 2007

By:/s/ Kevin D. Howard  
Name: Kevin D. Howard  
Title: *Vice President and Chief Accounting Officer*

---

## EXHIBIT INDEX

<b>Exhibit Number</b>	<b>Description</b>
Exhibit 4.1	Indenture relating to the 6.50% Convertible Senior Notes due 2027, dated as of October 2, 2007, between Charter Communications, Inc., as Issuer, and The Bank of New York Trust Company, N.A., as Trustee. *
Exhibit 10.1	Amended and Restated Share Lending Agreement, dated October 2, 2007, between Charter Communications, Inc., Citigroup Global Markets Limited, through Citigroup Global Markets, Inc.*
Exhibit 10.2	Amended and Restated Unit Lending Agreement, dated as of October 2, 2007, between Charter Communications Holding Company, LLC as Lender and Charter Communications, Inc. as Borrower.*
Exhibit 10.3	6.50% Mirror Convertible Senior Note due 2027 in the principal amount of \$479 million, dated as of October 2, 2007, made by Charter Communications Holding Company, LLC in favor of Charter Communications, Inc.*

\* filed herewith

**CHARTER COMMUNICATIONS, INC.**

**and**

**THE BANK OF NEW YORK TRUST COMPANY, N.A.,**

**as Trustee**

---

**INDENTURE**

**Dated as of October 2, 2007**

---

**6.50% Convertible Senior Notes due 2027**

---

## TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS AND INCORPORATION BY REFERENCE	1	
Section 1.01	Definitions.	1
Section 1.02	Other Definitions.	10
Section 1.03	Incorporation by Reference of Trust Indenture Act.	10
Section 1.04	<i>Rules of Construction.</i>	11
ARTICLE 2 THE NOTES		11
Section 2.01	Form and Dating.	11
Section 2.02	Execution and Authentication.	12
Section 2.03	Registrar; Conversion Agent; and Paying Agent.	13
Section 2.04	Paying Agent to Hold Money in Trust.	13
Section 2.05	Holder Lists.	13
Section 2.06	Global Notes; Non-global Notes; Book-Entry Provisions.	14
Section 2.07	Registration; Registration of Transfer and Exchange; Restrictions on Transfer.	15
Section 2.08	Replacement Notes.	18
Section 2.09	Outstanding Notes.	19
Section 2.10	Treasury Notes.	19
Section 2.11	Temporary Notes.	19
Section 2.12	Cancellation.	20
Section 2.13	Defaulted Interest.	20
Section 2.14	Computation of Interest.	20
Section 2.15	CUSIP Numbers.	20
ARTICLE 3 REDEMPTION AND PREPAYMENT		21
Section 3.01	Notices to Trustee.	21
Section 3.02	Selection of Notes to Be Redeemed.	21
Section 3.03	Notice of Redemption.	21
Section 3.04	Effect of Notice of Redemption.	22
Section 3.05	Deposit of Redemption Price.	23
Section 3.06	Notes Redeemed in Part.	23
Section 3.07	Optional Redemption.	23
Section 3.08	Mandatory Redemption.	24
ARTICLE 4 COVENANTS		24
Section 4.01	Payment of Notes.	24
Section 4.02	Maintenance of Office or Agency.	24
Section 4.03	Reports.	25
Section 4.04	Compliance Certificate.	25
Section 4.05	Taxes.	26
Section 4.06	Stay, Extension and Usury Laws.	26
Section 4.07	Corporate Existence.	26

Section 4.08	Payments for Consent.	26
Section 4.09	Registration and Listing.	26
Section 4.10	Delivery of Certain Information.	27
Section 4.11	Waiver of Certain Covenants.	27
<b>ARTICLE 5 SUCCESSORS</b>		<b>28</b>
Section 5.01	Merger, Consolidation, or Sale of Assets.	28
Section 5.02	Successor Corporation Substituted.	28
<b>ARTICLE 6 DEFAULTS AND REMEDIES</b>		<b>29</b>
Section 6.01	Events of Default.	29
Section 6.02	Acceleration.	30
Section 6.03	Defaults and Remedies.	30
Section 6.04	Waiver of Existing Defaults.	31
Section 6.05	Control by Majority.	31
Section 6.06	Limitation on Suits.	31
Section 6.07	Rights of Holders of Notes to Receive Payment and to Convert.	32
Section 6.08	Collection Suit by Trustee.	32
Section 6.09	Trustee May File Proofs of Claim.	32
Section 6.10	Priorities.	33
Section 6.11	Undertaking for Costs.	33
<b>ARTICLE 7 TRUSTEE</b>		<b>33</b>
Section 7.01	Duties of Trustee.	33
Section 7.02	Rights of Trustee.	34
Section 7.03	Individual Rights of Trustee.	35
Section 7.04	Trustee's Disclaimer.	36
Section 7.05	Notice of Defaults.	36
Section 7.06	Reports by Trustee to Holders of the Notes.	36
Section 7.07	Compensation and Indemnity.	36
Section 7.08	Replacement of Trustee.	37
Section 7.09	Successor Trustee By Merger, etc.	38
Section 7.10	Eligibility; Disqualification.	38
Section 7.11	Preferential Collection of Claims Against the Company.	38
<b>ARTICLE 8 MEETINGS OF HOLDERS OF NOTES</b>		<b>39</b>
Section 8.01	Purposes for Which Meetings May be Called.	39
Section 8.02	Call, Notice and Place of Meetings.	39
Section 8.03	Persons Entitled to Vote at Meetings.	39
Section 8.04	Quorum; Action.	39
Section 8.05	Determination of Voting Rights; Conduct and Adjournment of Meetings.	40
Section 8.06	Counting Votes and Recording Action of Meetings.	41
<b>ARTICLE 9 AMENDMENT, SUPPLEMENT AND WAIVER</b>		<b>41</b>
Section 9.01	Without Consent of Holders of Notes.	41
Section 9.02	With Consent of Holders of Notes.	42



Section 9.03	Compliance with Trust Indenture Act.	44
Section 9.04	Revocation and Effect of Consents.	44
Section 9.05	Notation on or Exchange of Notes.	44
Section 9.06	Trustee to Sign Amendments, etc.	44
ARTICLE 10 CONVERSION OF NOTES		45
Section 10.01	Conversion Privilege and Conversion Rate.	45
Section 10.02	Exercise of Conversion Privilege.	46
Section 10.03	Limitation on Beneficial Ownership	47
Section 10.04	Cash Settlement Option	48
Section 10.05	Fractions of Shares.	48
Section 10.06	Exchange in Lieu of Conversion	49
Section 10.07	Adjustment of Conversion Rate.	49
Section 10.08	Interest Make Whole Upon Conversion.	57
Section 10.09	Notice of Adjustments of Conversion Rate.	58
Section 10.10	Notice of Certain Corporate Action.	59
Section 10.11	Company to Reserve Common Stock.	60
Section 10.12	Taxes on Conversions.	60
Section 10.13	Covenant as to Common Stock.	60
Section 10.14	Cancellation of Converted Notes.	60
Section 10.15	Provision in Case of Consolidation, Merger or Sale of Assets.	60
Section 10.16	Responsibility of Trustee for Conversion Provisions.	61
ARTICLE 11 REPURCHASE OF NOTES AT THE OPTION OF THE HOLDER UPON A FUNDAMENTAL CHANGE		62
Section 11.01	Right to Require Repurchase upon a Fundamental Change.	62
Section 11.02	Repurchase of Notes at the Option of Holders.	65
Section 11.03	Consolidation, Merger, etc.	67
ARTICLE 12 MISCELLANEOUS		68
Section 12.01	Trust Indenture Act Controls.	68
Section 12.02	Notices.	68
Section 12.03	Communication by Holders of Notes with Other Holders of Notes.	69
Section 12.04	Certificate and Opinion as to Conditions Precedent.	69
Section 12.05	Statements Required in Certificate or Opinion.	69
Section 12.06	Rules by Trustee and Agents.	70
Section 12.07	No Personal Liability of Directors, Officers, Employees, Members and Stockholders.	70
Section 12.08	Governing Law.	70
Section 12.09	No Adverse Interpretation of Other Agreements.	70
Section 12.10	Successors.	70
Section 12.11	Severability.	71
Section 12.12	Counterpart Originals.	71
Section 12.13	Table of Contents, Headings, etc.	71
Section 12.14	Waiver of Jury Trial.	71
Section 12.15	Force Majeure.	71

ARTICLE 13 SATISFACTION AND DISCHARGE	71
Section 13.01 Satisfaction and Discharge of Indenture.	71
Section 13.02 Application of Trust Money.	72

## CROSS-REFERENCE TABLE

TIA Section	Indenture Section
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)	N/A
(c)	N/A
313(a)	7.06
(b)(1)	N/A
(b)(2)	7.06, 7.07
(c)	7.06, 12.02
(d)	7.06
314(a)	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)	N/A
315(a)	N/A
(b)	N/A
(c)	N/A
(d)	N/A
(e)	N/A
316(a) (last sentence)	N/A
(a)(1)(A)	N/A
(a)(1)(B)	N/A
(a)(2)	N/A
(b)	N/A
317(a)(1)	N/A
(a)(2)	N/A
(b)	N/A
318(a)	N/A
318(c)	12.01

N/A means Not Applicable

Note: This Cross-Reference Table shall not, for any purpose, be deemed to be part of this Indenture.

INDENTURE dated as of October 2, 2007 among Charter Communications, Inc., a Delaware corporation (as further defined below, the “**Company**”), and The Bank of New York Trust Company, N.A., a national banking association, as trustee (the “**Trustee**”).

The Company and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the Notes:

## ARTICLE 1

### DEFINITIONS AND INCORPORATION BY REFERENCE

#### Section 1.01 Definitions.

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

“**Agent**” means any Registrar, Paying Agent or Conversion Agent.

“**Agent Member**” means any member of, or participant in, the Depository.

“**Allen Affiliate**” means any person in which the Principal, directly or indirectly, owns at least a 50.1% equity interest, provided that the Company, Charter Holdco or any of its Subsidiaries will not be included in such definition.

“**Applicable Procedures**” means, with respect to any transfer or transaction involving a Global Note or beneficial interest therein, the rules and procedures of DTC, in each case to the extent applicable to such transaction and as in effect from time to time.

“**Bankruptcy Law**” means Title 11, U.S. Code or any similar Federal or state law of any jurisdiction relating to bankruptcy, insolvency, winding up, liquidation, reorganization or relief of debtors.

“**Beneficial Owner**” has the meaning assigned to such term in Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, and the term “**Beneficial Ownership**” shall have a correlative meaning.

“**Beneficial Owner Entity**” means any entity that is a director or indirect Beneficial Owner of more than 50% of the total voting power of all shares of an acquirer’s capital stock that are entitled to vote generally in the election of directors.

---

“**Board of Directors**” means the Board of Directors of the Company or any authorized committee of the Board of Directors of the Company.

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

“**Business Day**” means any day other than a Legal Holiday.

“**Capital Stock**” means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interest (other than any debt obligation) 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.

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

- (1) the consummation of any transaction (including any merger or consolidation) the result of which is that any “person” or “group” within the meaning of Section 13(d) of the Exchange Act (a “**Section 13 Person**”), other than the Principal and the Related Parties, becomes the Beneficial Owner, directly or indirectly, of more than 35% of the Voting Stock of the Company, measured by voting power rather than number of shares, unless the Principal and the Related Parties, collectively, beneficially own, directly or indirectly, a greater percentage of Voting Stock of the Company, measured by voting power rather than number of shares, than such Section 13 Person;
- (2) the consummation of any transaction or event (whether by means of a liquidation, share exchange, tender offer, consolidation, recapitalization, reclassification, merger of the Company or any sale, lease or other transfer of the consolidated assets of the Company and its Subsidiaries) or a series of related transactions or events pursuant to which the Common Stock is exchanged for, converted into or constitutes solely the right to receive cash, securities or other property more than 10% of the fair market value of which consists of cash, securities or other property that are not, or upon issuance will not be, traded or quoted on any U.S. national securities exchange;
- (3) the sale, transfer, conveyance, lease or other disposition (including by way of liquidation or dissolution, but excluding by way of merger or consolidation), in one or a series of related transactions, of the assets of the Company and its Subsidiaries, substantially as an entirety, to any Section 13 Person;

(4) at any time, (i) the Principal or any Allen Affiliates (as defined below) purchases, in a transaction or series of transactions, shares of Common Stock and, solely as a result of such purchases, the aggregate number of shares of Common Stock held by the Principal and any Allen Affiliates exceeds 70% of the total number of shares of Common Stock issued and outstanding at such time (including any shares borrowed pursuant to the Share Lending Agreement) and (ii) the Sale Price of the Common Stock for any five Trading Days within the period of the 10 consecutive Trading Days immediately after the later of (x) the last date of such purchases or (y) the public announcement of such purchases, is less than 100% of the Conversion Price of the Notes in effect on each of those Trading Days (for purposes of this clause (4), a purchase will not include any transaction whereby shares of Common Stock are acquired by the Principal or any Allen Affiliate as a result of service as a director on the Board of Directors or the exchange and conversion of membership units of Charter Holdco for and into shares of Common Stock or the conversion of shares of the Company's Class B Common Stock, par value \$.001 per share, into shares of Common Stock or issued in exchange (by merger or otherwise) for shares of a Person that holds units of Charter Holdco; the calculation of the number of shares of Common Stock held by the Principal and the Allen Affiliates will not include securities exchangeable or convertible into shares of Common Stock.

(5) after the Issue Date, the first day on which a majority of the members of the Board of Directors of the Company are not Continuing Directors; or

(6) the adoption of a plan relating to the liquidation or dissolution of the Company.

**"Charter Holdco"** means Charter Communications Holding Company, LLC.

**"Commission" or "SEC"** means the Securities and Exchange Commission.

**"common stock"** includes any stock of any class of capital stock which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the issuer thereof and which is not subject to redemption by the issuer thereof.

**"Common Stock"** means the Class A Common Stock, par value \$.001 per share, of the Company authorized at the date of this instrument as originally executed. Subject to the provisions of Section 10.14, shares issuable on conversion or repurchase of Notes shall include only shares of Common Stock or shares of any class or classes of common stock resulting from any reclassification or reclassifications thereof; provided, however, that if at any time there shall be more than one such resulting class, the shares so issuable on conversion of Notes shall include shares of all such classes, and the shares of each such class then so issuable shall be substantially in the proportion that the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

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

**“Continuing Directors”** means, as of any date of determination, any member of the Board of Directors of the Company who:

(1) was a member of the Board of Directors on the Issue Date; or

(2) was nominated for election or elected to the Board of Directors with the approval of a majority of the Continuing Directors who were members of the Board of Directors at the time of such nomination or election or whose election or appointment was previously so approved.

**“Conversion Agent”** means any Person authorized by the Company to convert Notes in accordance with Article 10. The Company has initially appointed the Trustee as its Conversion Agent pursuant to Section 2.03 hereof.

**“Conversion Average Price”** of Common Stock means, with respect to any conversion of Notes, the average of the Sale Prices of the Common Stock over the Conversion Averaging Period.

**“Conversion Averaging Period”** means the 20 Trading Day period (i) with respect to a Conversion Date occurring during the period beginning on the date the Company gives a notice of redemption and ending on the close of business on the Business Day prior to the applicable Redemption Date, beginning on the Redemption Date; and (ii) in all other cases, beginning on the third scheduled Trading Day immediately following the applicable Conversion Date for such conversion of Notes.

**“Conversion Price”** as of any date shall equal U.S. \$1,000 divided by the Conversion Rate in effect on such date (rounded to the nearest cent).

**“Conversion Rate”** has the meaning specified in Section 10.01(a) hereof.

**“Corporate Trust Office”** means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 2 N. LaSalle Street, Suite 1020, Chicago, IL 60602, Attention: Corporate Trust Administration, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

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

**“Depository”** means, with respect to any Notes (including any Global Notes), a clearing agency that is registered under the Exchange Act and is designated by the Company to act as Depository for such Notes (or any successor securities clearing agency so registered).

**“DTC”** means The Depository Trust Company, a New York corporation.

“**Effective Date**” means the date of consummation or effectiveness of a transaction described in clause (2) of the definition of Change of Control.

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

“**Exchange Offer Prospectus**” means the exchange offer prospectus, dated August 29, 2007, as amended on September 14, 2007, prepared in connection with the offering of the Notes being issued on the date hereof.

“**Fundamental Change**” means a Change of Control or a Termination of Trading

“**Global Note**” means a Note that is registered in the Note Register for the Notes in the name of a Depository or a nominee thereof.

“**Guarantee**” or “**guarantee**” means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness, measured as the lesser of the aggregate outstanding amount of the Indebtedness so guaranteed and the face amount of the Guarantee.

“**Holder**” means the Person in whose name the Note is registered in the Note Register.

“**Indebtedness**” means, with respect to any specified Person, any indebtedness of such Person, whether or not contingent:

- (1) in respect of borrowed money;
- (2) evidenced by bonds, notes, debentures or similar instruments; or
- (3) representing capital lease obligations.

The amount of any Indebtedness outstanding as of any date shall be (i) the accreted value thereof, in the case of any Indebtedness issued with original issue discount; and (ii) the principal amount (or portion of the discounted rental stream attributable to principal in the case of capitalized leases) thereof, together with any interest thereon 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.

“**Interest Payment Date**” means the Stated Maturity of an installment of interest on the Notes, such dates being April 1 and October 1 of each year, commencing April 1, 2008.

“**Issue Date**” means October 2, 2007.

“**Legal Holiday**”, when used with respect to any place of payment or Place of Conversion, as the case may be, means a Saturday, a Sunday or a day on which banking institutions in The City of New York, at such place of payment or Place of Conversion, as the



case may be, are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period.

“**Maturity**”, when used with respect to any Notes, means the date on which the Principal Amount of such Notes becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, exercise of the repurchase right set forth in Article 11 or otherwise.

“**Non-global Note**” means a Note that is in definitive, fully registered form, without interest coupons, and that is not a Global Note.

“**Notes**” means the Company’s 6.50% Convertible Senior Notes due 2027 and more particularly means any Notes authenticated and delivered under this Indenture, including any Additional Notes.

“**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 on behalf of the Company by two Officers of the Company, one of whom must be the principal executive officer, the chief financial officer or the treasurer of the Company that meets the requirements of Section 12.05.

“**Opinion of Counsel**” means an opinion from legal counsel that meets the requirements of Section 12.05. The counsel may be an employee of or counsel to the Company or any Subsidiary of the Company.

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

“**Place of Conversion**” means any city in which any Conversion Agent is located.

“**Predecessor Note**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.08 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Note shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Note.

“**Principal**” means Paul G. Allen.

“**Principal Amount**” of a Note means the stated principal amount as set forth on the face of such Note.

**“Record Date Period”** means the period from the close of business of any Regular Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date.

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

**“Redemption Make Whole Amount”** has the meaning specified in Section 10.08.

**“Redemption Price”** has the meaning specified in Section 3.07.

**“Regular Record Date”** for interest payable in respect of any Note on any Interest Payment Date means the March 15 or September 15 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

**“Related Party”** means:

- (1) the spouse or an immediate family member, estate or heir of the Principal; or
- (2) 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 the Principal and/or such other Persons referred to in the immediately preceding clause (1) or this clause (2).

**“Responsible Officer”** when used with respect to the Trustee, means any officer within the Corporate Trust Administration of the Trustee (or any successor group of the Trustee) with direct responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

**“Restricted Non-global Note”** means a Restricted Note other than a Global Note.

**“Restricted Notes”** means all Notes required pursuant to Section 2.07(3) to bear any Restricted Notes Legend.

**“Restricted Notes Certificate”** means a certificate substantially in the form set forth in Annex A.

**“Restricted Notes Legend”** means, collectively, the legends substantially in the forms of the legends required in the form of Note set forth in Exhibit A to be placed upon each Restricted Note.

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

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

**“Sale Price”** of Common Stock or any other security on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and asked prices or,

if more than one in either case, the average of the average bid and the average asked prices) on that date as reported in transactions for the principal U.S. securities exchange or market on which the Common Stock or such other security is traded or quoted. The Sale Price will be determined without reference to after-hours or extended market trading. If the Common Stock or such other security is not listed for trading or quoted on a U.S. national or regional securities exchange or market on the relevant date, the Sale Price will be the last quoted bid price for the Common Stock or such other security in the Nasdaq Capital Market or in the over-the-counter market on the relevant date as reported by Pink Sheets LLC or any similar organization. If the Common Stock or such other security is not so quoted, the Sale Price will be the average of the mid-point of the last bid and asked prices for the Common Stock or such other security on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

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

“**Share Lending Agreement**” means the Share Lending Agreement, dated as of November 22, 2004, between the Company and Citigroup Global Markets Limited, as such agreement may be amended from time to time.

“**Significant Subsidiary**” means any Subsidiary of the Company which is a “significant subsidiary” as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act.

“**Stated Maturity**”, when used with respect to the Principal Amount of any Note or the payment of interest on any Note, means the date specified in such Note as the fixed date on which the Principal Amount of such Note or such installment of interest is due and payable.

“**Stock Price**” means the price per share of Common Stock paid in connection with a corporate transaction described in clause (2) of the definition of Change of Control, which shall be equal to (i) if holders of Common Stock receive only cash in such corporate transaction, the cash amount paid per share of Common Stock and (ii) in all other cases, the average of the Sale Prices of Common Stock on the last ten Trading Days up to but not including the Effective Date.

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

(1) any corporation, association or other business entity of which at least 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person (or a combination thereof) and, in the case of any such entity of which 50% of the total voting power of shares of Capital Stock is so owned or controlled by such Person or one or more of the other Subsidiaries of such Person, such Person and its Subsidiaries also has the right to control the management of such entity pursuant to contract or otherwise; and

(2) 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 such Person or of one or more Subsidiaries of such Person (or any combination thereof).

“**Successor Note**” of any particular Note means every Note issued after, and evidencing all or a portion of the same debt as that evidenced by, such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.08 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Note shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Note.

“**Surrender Certificate**” means a certificate substantially in the form set forth in Annex C.

“**Termination of Trading**” will be deemed to have occurred if the Common Stock (or other common stock into which the Notes are convertible) is neither listed for trading or quoted on a U.S. national securities exchange; provided that a Termination of Trading will not occur so long as the Common Stock is listed for trading or quoted on the Nasdaq Capital Market or quoted bid prices for the Common Stock in the over-the-counter market are reported by Pinks Sheets LLC or any similar organization.

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

“**Trading Day**” means a day during which trading in securities generally occurs on the principal U.S. national or regional securities exchange or market on which the Common Stock is then listed or quoted or, if the Common Stock is not then listed or quoted on a national or regional securities exchange or market, on the principal other market on which the Common Stock is traded.

“**Trustee**” means The Bank of New York Trust Company, N.A. until a successor replaces The Bank of New York Trust Company, N.A. in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

“**Unrestricted Notes Certificate**” means a certificate substantially in the form set forth in Annex B.

“**Voting Stock**” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the board of directors of such Person.

## Section 1.02 Other Definitions.

Term	Defined in Section
“Accepted Purchased Shares”	10.07(g)
“Additional Notes”	2.02
“Additional Shares”	10.01(b)
“Authentication Order”	2.02
“Constituent Person”	10.15
“Conversion Date”	10.02(a)
“Conversion Rate”	10.01(a)
“Conversion Settlement Date”	10.01(a)
“Current Market Price”	10.07(h)
“Event of Default”	6.01
“Ex-date”	10.07(i)
“Expiration Date”	10.07(f)
“fair market value”	10.07(j)
“Five Year Repurchase Date”	11.02
“Fundamental Change Repurchase Date”	11.01(b)
“Fundamental Change Repurchase Price”	11.01(a)
“Initial Notes”	2.02
“Non-Electing Share”	10.15
“Note Register”	2.03
“Offer Expiration Date”	10.07(g)
“Paying Agent”	2.03
“Payment Default”	6.01
“Purchased Shares”	10.07(f)
“Registrar”	2.03
“Repurchase Notice”	11.01
“Restricted Global Note”	2.01
“Rule 144A Information”	4.10
“Specified Percentage”	10.03
“Spin-Off”	10.07(e)
“Statistical Release”	10.08
“Trigger Event”	10.07(d)

## Section 1.03 Incorporation by Reference of Trust Indenture Act.

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 means the Company and any successor obligor upon the Notes.

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

**Section 1.04 Rules of Construction.**

Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) “or” is not exclusive and “including” means “including without limitation”;
- (d) words in the singular include the plural, and in the plural include the singular;
- (e) provisions apply to successive events and transactions;
- (f) 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;
- (g) references to any statute, law, rule or regulation shall be deemed to refer to the same as from time to time amended and in effect and to any successor statute, law, rule or regulation; and
- (h) references to any contract, agreement or instrument shall mean the same as amended, modified, supplemented or amended and restated from time to time, in each case, in accordance with any applicable restrictions contained in this Indenture.

**ARTICLE 2**

**THE NOTES**

**Section 2.01 Form and Dating.**

The Notes and the conversion notices 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. Each Note shall be dated the date of its authentication. The Principal Amount of the Notes shall be in denominations of \$1,000 and integral multiples thereof.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

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.

Upon their original issuance, Initial Notes shall be issued in the form of one or more Global Notes in definitive, fully registered form without interest coupons and without the Restricted Note Legend. Additional Notes shall be issued in the form of one or more Global Notes in definitive, fully registered form without interest coupons and, unless issued pursuant to an effective registration statement under the Securities Act, bearing the Restricted Note Legend. Global Notes bearing the Restricted Note Legend, together with their Successor Notes which are Global Notes, are collectively herein called the “**Restricted Global Notes**”. Global Note shall be registered in the name of DTC, as Depositary, or its nominee and deposited with the Trustee, as custodian for DTC, for credit by DTC to the respective accounts of beneficial owners of the Notes represented thereby (or such other accounts as they may direct).

## **Section 2.02 Execution and Authentication.**

Two Officers 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 a Note is authenticated, the Note shall nevertheless be valid.

A Note shall not be valid until authenticated by the manual signature (which may be by facsimile) of the Trustee. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication; and the Trustee shall authenticate and deliver such Notes upon a written order of the Company signed by an Officer of the Company (an “**Authentication Order**”). Such Authentication Order shall specify the amount of Notes to be authenticated and the date on which the Notes are to be authenticated and whether the Notes are to be issued as one or more Global Notes and such other information as the Company may include or the Trustee may reasonably request. The aggregate Principal Amount of Notes that may be outstanding under this Indenture is unlimited; provided that upon initial issuance, the aggregate Principal Amount of Notes outstanding shall not exceed \$479,168,000, except as provided in Section 2.08. The Company, without the consent of the Holders of Notes, may issue additional Notes (the “**Additional Notes**”) from time to time having identical terms and conditions as the Notes originally issued under this Indenture (the “**Initial Notes**”), except for any difference in the issue price and interest accrued prior to the issue date of such Additional Notes; provided that such Additional Notes are fungible with the Initial Notes for United States federal income tax purposes. The Initial Notes and any Additional Notes shall constitute a single series of debt securities and, in circumstances in which this Indenture provides for Holders of Notes to vote or take any action, the Holders of Initial Notes and the Holders of any Additional Notes shall vote or take such action as a single class.

The Trustee may appoint an 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 agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Company.

### **Section 2.03 Registrar; Conversion Agent; and Paying Agent.**

The Company shall maintain an office or agency where Notes may be presented for registration of transfer, exchange, conversion, redemption or repurchase (“Registrar” and with respect to conversion, “Conversion Agent”) and an office or agency where Notes may be presented for payment (“Paying Agent”). The Registrar shall keep a register of the Notes and of their transfer, exchange and conversion (the register maintained in such office, the “Note Register”). The Company may appoint one or more co-registrars or conversion agents and one or more additional paying agents. The term “Registrar” includes any co-registrar, the term “Conversion Agent” includes any co-conversion agent and the term “Paying Agent” includes any additional paying agent. The Company may change any Paying Agent, Registrar or Conversion Agent without notice to any Holder. The Company shall promptly 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, Paying Agent or Conversion Agent, the Trustee shall act as such. The Company or any of its Subsidiaries may act as Paying Agent, Registrar or Conversion Agent.

The Company initially appoints DTC to act as Depository with respect to the Global Notes.

The Company initially appoints the Trustee to act as the Registrar, Paying Agent and Conversion Agent and custodian with respect to the Global Notes.

### **Section 2.04 Paying Agent to Hold Money in Trust.**

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 the Principal Amount, premium, if any, or interest on the Notes, and shall notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary) 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 ss. 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 ss. 312(a).

**Section 2.06 Global Notes; Non-global Notes; Book-Entry Provisions.**

(a) Global Notes

(i) Each Global Note authenticated under this Indenture shall be registered in the name of the Depository designated by the Company for such Global Note or a nominee thereof and delivered to such Depository or a nominee thereof or custodian thereof, and each such Global Note shall constitute a single Note for all purposes of this Indenture.

(ii) Notwithstanding any other provisions of this Indenture or the Notes, a Global Note shall not be exchanged in whole or in part for a Note registered in the name of any Person other than the Depository or one or more nominees thereof, provided that a Global Note may be exchanged for Notes registered in the names of any Person designated by the Depository in the event that (A) the Depository has notified the Company that it is unwilling or unable to continue as Depository for such Global Note or such Depository has ceased to be a “clearing agency” registered under the Exchange Act, and a successor Depository is not appointed by the Company within 90 days, (B) to the extent permitted by the Depository, the Company, in its sole discretion, determines at any time that the Notes shall no longer be represented by Global Notes and shall inform such Depository of such determination; or (C) there is a request by or on behalf of the Depository in accordance with its customary procedures to exchange an interest in the Global Notes for Non-global Notes. Any Global Note exchanged pursuant to clause (A) above shall be so exchanged in whole and not in part, and any Global Note exchanged pursuant to clause (B) or (C) above may be exchanged in whole or from time to time in part as directed by the Depository. Any Note issued in exchange for a Global Note or any portion thereof shall be a Global Note; provided that any such Note so issued that is registered in the name of a person other than the Depository or a nominee thereof shall not be a Global Note.

(iii) If any Global Note is to be exchanged for other Notes or canceled in whole, it shall be surrendered by or on behalf of the Depository or its nominee to the Trustee, as Note Registrar, for exchange or cancellation, as provided in this Article 2. If any Global Note is to be exchanged for other Notes or canceled in part, or if another Note is to be exchanged in whole or in part for a beneficial interest in any Global Note, in each case, as provided in Section 2.07, then either (A) such Global Note shall be so surrendered for exchange or cancellation, as provided in this Article 2, or (B) the Principal Amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged or canceled, or equal to the Principal Amount of such other Note to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Trustee, as Registrar, whereupon the Trustee, in accordance with the Applicable Procedures, shall instruct the Depository or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Note, the Trustee shall, subject to Section 2.07(c) and as otherwise provided in this Article 2, authenticate and deliver any Notes issuable in exchange for such Global Note (or any portion thereof) to or upon the order of, and registered in such names as may be directed by, the Depository or its authorized representative. Upon the request of the Trustee in connection with the occurrence of any of the events specified

in the preceding paragraph, the Company shall promptly make available to the Trustee a reasonable supply of Notes that are not in the form of Global Notes. The Trustee shall be entitled to rely upon any order, direction or request of the Depositary or its authorized representative which is given or made pursuant to this Article 2 if such order, direction or request is given or made in accordance with the Applicable Procedures.

(iv) Every Note authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Note or any portion thereof, whether pursuant to this Article 2 or otherwise, shall be authenticated and delivered in the form of, and shall be, a registered Global Note, unless such Note is registered in the name of a Person other than the Depositary for such Global Note or a nominee thereof, in which case such Note shall be authenticated and delivered in definitive, fully registered form, without interest coupons.

(v) The Depositary or its nominee, as registered owner of a Global Note, shall be the Holder of such Global Note for all purposes under the Indenture and the Notes, and owners of beneficial interests in a Global Note shall hold such interests pursuant to the Applicable Procedures. Accordingly, any such owner's beneficial interest in a Global Note shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Agent Members and such owners of beneficial interests in a Global Note shall not be considered the owners or holders thereof.

(b) Non-global Notes. Notes issued upon the events described in Section 2.06(a)(ii) shall be in definitive, fully registered form, without interest coupons, and shall bear the Restricted Notes Legend if and as required by this Indenture.

#### **Section 2.07 Registration; Registration of Transfer and Exchange; Restrictions on Transfer.**

(a) Upon surrender for registration of transfer of any Note at an office or agency of the Company designated pursuant to Section 2.03 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate Principal Amount and bearing such restrictive legends as may be required by this Indenture.

At the option of the Holder, and subject to the other provisions of this Section 2.07, Notes may be exchanged for other Notes of any authorized denomination and of a like aggregate Principal Amount, upon surrender of the Notes to be exchanged at any such office or agency. Whenever any Notes are so surrendered for exchange, and subject to the other provisions of this Section 2.07, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes which the Holder making the exchange is entitled to receive. Every Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Registrar) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company, the Trustee and the Registrar duly executed, by the Holder thereof or its attorney duly authorized in writing.

All Notes issued upon any registration of transfer or exchange of Notes shall be the legal, valid and binding obligations of the Company, evidencing the same debt and entitled to the same

benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

No service charge shall be made to a Holder for any registration of transfer or exchange of Notes except as provided in Section 2.08, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes, other than exchanges pursuant to Section 2.06, 9.05, 10.02, 11.01 or 11.02 (other than where the shares of Common Stock are to be issued or delivered in a name other than that of the Holder of the Note) not involving any transfer and other than any stamp and other duties, if any, which may be imposed in connection with any such transfer or exchange by the United States or any political subdivision thereof or therein, which shall be paid by the Company.

In the event of a redemption of the Notes, neither the Company nor the Registrar will be required (a) to register the transfer of or exchange any Non-global Note for a period of 15 days immediately preceding the date notice is given identifying the certificate numbers of the Notes called for such redemption or (b) to register the transfer of or exchange any Non-global Note, or portion thereof, called for redemption.

(b) Certain Transfers and Exchanges. Notwithstanding any other provision of this Indenture or the Notes, transfers and exchanges of Notes and beneficial interests in a Global Note of the kinds specified in this Section 2.07(b) shall be made only in accordance with this Section 2.07(b).

(i) Restricted Global Note to Restricted Non-global Note. In the event that Non-global Notes are to be issued pursuant to Section 2.06(a)(ii) in connection with any transfer of Notes, such transfer may be effected only in accordance with the provisions of this Clause (b)(i) and subject to the Applicable Procedures. Upon receipt by the Trustee, as Registrar, of (A) an Authentication Order from the Company directing the Trustee, as Registrar, to (x) authenticate and deliver one or more Notes of the same aggregate Principal Amount as the beneficial interest in the Restricted Global Note to be transferred, such instructions to contain the name or names of the designated transferee or transferees, the authorized denomination or denominations of the Notes to be so issued and appropriate delivery instructions and (y) decrease the beneficial interest of a specified Agent Member's account in a Restricted Global Note by a specified Principal Amount not greater than the Principal Amount of such Restricted Global Note, and (B) such other certifications, legal opinions or other information as the Company or the Trustee may reasonably require to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, then the Trustee, as Registrar, shall decrease the Principal Amount of the Restricted Global Note by the specified amount and authenticate and deliver Notes in accordance with such instructions from the Company as provided in Section 2.06(a)(iii).

(ii) Restricted Non-global Note to Restricted Global Note. If the Holder of a Restricted Non-global Note wishes at any time to transfer all or any portion of such Restricted Non-global Note to a Person who wishes to take delivery thereof in the form of a beneficial interest in the Restricted Global Note, such transfer may be effected only in accordance with the provisions of this Clause (b)(ii) and subject to the Applicable Procedures. Upon receipt by the

Trustee, as Registrar, of (A) such Restricted Non-global Note as provided in Section 2.07(a) and written instructions from the Company directing that a beneficial interest in the Restricted Global Note in a specified Principal Amount not greater than the Principal Amount of such Restricted Non-global Note be credited to a specified Agent Member's account and (B) a Restricted Notes Certificate, satisfactory to the Trustee and duly executed by such Holder or its attorney duly authorized in writing, then the Trustee, as Registrar, shall cancel such Restricted Non-global Note (and issue a new Restricted Non-global Note in respect of any untransferred portion thereof) as provided in Section 2.07(a) and increase the Principal Amount of the Restricted Global Note by the specified Principal Amount as provided in Section 2.06(a)(iii).

(iii) Exchanges Between Global Note and Non-global Note. A beneficial interest in a Global Note may be exchanged for a Non-global Note only as provided in Section 2.06(a)(iii), provided that, if such interest is a beneficial interest in the Restricted Global Note, then such interest shall be exchanged for a Restricted Non-global Note (subject in each case to Section 2.07(c)). A Restricted Non-global Note may be exchanged for a beneficial interest in a Global Note only if such exchange occurs in connection with a transfer effected in accordance with Clause (b)(ii) above.

(c) Securities Act Legends. All Additional Notes issued pursuant to this Indenture, and all Successor Notes therefor, shall bear the Restricted Notes Legend, subject to the following:

(i) subject to the following Clauses of this Section 2.07(c), a Note or any portion thereof which is exchanged, upon transfer or otherwise, for a Global Note or any portion thereof shall bear the Restricted Notes Legend borne by such Global Note for which the Note was exchanged;

(ii) subject to the following Clauses of this Section 2.07(c), a new Note which is not a Global Note and is issued in exchange for another Note (including a Global Note) or any portion thereof, upon transfer or otherwise, shall bear the Restricted Notes Legend borne by the Note for which the new Note was exchanged;

(iii) the Initial Notes and any Additional Notes which are sold or otherwise disposed of pursuant to an effective registration statement under the Securities Act, together with their Successor Notes shall not bear a Restricted Notes Legend; the Company shall inform the Trustee in writing of the effective date of any such registration statement registering Additional Notes under the Securities Act and shall notify the Trustee at any time when prospectuses must be delivered with respect to Additional Notes to be sold pursuant to such registration statement. The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned registration statement;

(iv) at any time after the Notes may be freely transferred without registration under the Securities Act or without being subject to transfer restrictions pursuant to the Securities Act, a new Note which does not bear a Restricted Notes Legend may be issued in exchange for or in lieu of a Note (other than a Global Note) or any portion thereof which bears such a legend if the Trustee has received an Unrestricted Notes Certificate, satisfactory to the Trustee and duly executed by the Holder of such Note bearing a Restricted Notes Legend or its attorney duly

authorized in writing, and after such date and receipt of such certificate, the Trustee shall authenticate and deliver such new Note in exchange for or in lieu of such other Note as provided in this Article 2;

(v) a new Note which does not bear a Restricted Notes Legend may be issued in exchange for or in lieu of a Note or any portion thereof which bears such a legend if, in the Company's judgment, placing such a legend upon such new Note is not necessary to ensure compliance with the registration requirements of the Securities Act, and the Trustee, at the direction of the Company, shall authenticate and deliver such a new Note as provided in this Article 2; and

(vi) notwithstanding the foregoing provisions of this Section 2.07(c), a Successor Note of a Note that does not bear a Restricted Notes Legend shall not bear such legend unless the Company has reasonable cause to believe that such Successor Note is a "restricted security" within the meaning of Rule 144, in which case the Trustee, at the direction of the Company, shall authenticate and deliver a new Note bearing a Restricted Notes Legend in exchange for such Successor Note as provided in this Article 2.

(d) Any stock certificate representing shares of Common Stock issued upon conversion of Notes bearing the Restricted Notes Legend shall bear a legend substantially in the form of the Restricted Notes Legend borne by such Notes, to the extent required by this Indenture, unless such shares of Common Stock have been sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer) or sold pursuant to Rule 144(k) of the Securities Act, or unless otherwise agreed by the Company in writing with written notice thereof to the transfer agent for the Common Stock. With respect to the transfer of shares of Common Stock issued upon conversion of Notes that are restricted hereunder, any deliveries of certificates, legal opinions or other instruments that would be required to be made to the Registrar in the case of a transfer of Notes, as described above, shall instead be made to the transfer agent for the Common Stock. Any stock certificate representing shares of Common Stock issued upon conversion of Notes not bearing the Restricted Notes Legend shall not bear a legend in the form of the Restricted Notes Legend, unless the Company has reasonable cause to believe that such Common Stock is a "restricted security" within the meaning of Rule 144, in which case such stock certificate shall bear a legend substantially in the form of the Restricted Notes Legend.

(e) Neither the Trustee, the Paying Agent nor any of their agents shall (i) have any duty to monitor compliance with or with respect to any federal or state or other securities or tax laws or (ii) have any duty to obtain documentation on any transfers or exchanges other than as specifically required hereunder.

#### **Section 2.08 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, shall authenticate a replacement Note if 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 is an additional legally binding obligation of the Company and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

**Section 2.09 Outstanding Notes.**

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled 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 of this Indenture, and those described in this Section as not outstanding. Except as set forth in Section 2.10, a Note does not cease to be outstanding because either of the Company or an Affiliate of the Company holds the Note.

If a Note is replaced pursuant to Section 2.08, 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, Fundamental Change Repurchase Date, Five Year Repurchase 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.

If a Note is converted into Common Stock pursuant to Article 10, it ceases to be outstanding and interest on it ceases to accrue on the day of surrender of such Note or conversion.

**Section 2.10 Treasury Notes.**

In determining whether the Holders of the required Principal Amount of Notes have concurred in any direction, waiver or consent, or whether the Holders of the requisite Principal Amount of outstanding Notes are present at a meeting of Holders of Notes for quorum purposes, Notes owned by the Company, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with 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, or any such determination as to the presence of a quorum, only Notes that a Responsible Officer of the Trustee knows are so owned shall be so disregarded.

**Section 2.11 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.

**Section 2.12 Cancellation.**

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar, Conversion Agent and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange, conversion or payment. The Trustee and no one else shall cancel all Notes surrendered for registration of transfer, exchange, conversion, payment, replacement or cancellation and shall dispose of such canceled Notes in its customary manner. The Company may not issue new Notes to replace Notes that they have paid or that have been delivered to the Trustee for cancellation.

**Section 2.13 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 10 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 mail or cause to be mailed to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

**Section 2.14 Computation of Interest.**

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

**Section 2.15 CUSIP Numbers.**

The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed in 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 will promptly notify the Trustee of any change in the "CUSIP" 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, it shall furnish to the Trustee, at least 15 days prior to the giving of the notice and at least 30 days but not more than 60 days before a Redemption Date, an Officers' Certificate setting forth (i) the Redemption Date, (ii) the Principal Amount of Notes to be redeemed, (iii) whether the Company will deliver shares of Common Stock, or cash in lieu thereof, upon conversion of Notes called for redemption, (v) if the Company elects to deliver cash upon any such conversion, the percentage of the Conversion Rate with respect to which the Company will pay cash and (vi) whether the Company will deliver cash or shares of Common Stock with respect to any Redemption Make Whole Amount owed upon conversion.

#### Section 3.02 Selection of Notes to Be Redeemed.

If less than all of the Notes are to be redeemed at any time, the Trustee shall select the Notes to be redeemed among the Holders of the Notes on a pro rata basis, by lot or in accordance with any other method the Trustee considers fair and appropriate. In the event of partial redemption by lot, 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. If any Note selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Note so selected, the converted portion of such Note shall be deemed (so far as may be) to be the portion selected for redemption. Notes which have been converted during a selection of Notes to be redeemed may be treated by the Trustee as outstanding for the purpose of such selection.

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. The Principal Amount of Notes and portions of Notes selected shall be in amounts of \$1,000 or whole multiples of \$1,000; except that if all of the Notes of a Holder are to be redeemed, the entire outstanding Principal Amount of Notes held by such Holder, even if not a multiple of \$1,000, 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.

#### Section 3.03 Notice of Redemption.

At least 30 days but not more than 60 days before a Redemption Date, the Company shall mail or cause to be mailed, by first class mail, a notice of redemption to each Holder whose Notes are to be redeemed at its registered address.

The notice shall identify the Notes (including applicable CUSIP numbers) to be redeemed and shall state:



- (a) the Redemption Date;
- (b) the Redemption Price;
- (c) whether the Company will deliver shares of Common Stock or cash in lieu thereof upon conversion of any Notes called for redemption;
- (d) if the Company elects to deliver cash upon any such conversion, the percentage of the Conversion Rate with respect to which the Company will pay cash;
- (e) whether the Company will deliver cash or shares of Common Stock with respect to any Redemption Make Whole Amount owed upon conversion;
- (f) 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;
- (g) the name and address of the Paying Agent;
- (h) that Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price;
- (i) that, unless the Company defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the Redemption Date;
- (j) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes; and
- (k) the Conversion Rate, that there is a right to convert the Notes to be redeemed, the date on which the right to convert the Notes to be redeemed will terminate (which shall be the Business Day immediately preceding the Redemption Date) and the places where Notes may be surrendered for conversion or the procedures for surrendering 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, 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 notice of redemption is mailed in accordance with Section 3.03, Notes called for redemption 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.**

At or prior to 10:00 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 all Notes to be redeemed on that date. The Trustee or the Paying Agent shall promptly return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts, including but not limited to any amounts in respect of Notes that are converted (subject to Section 10.02), necessary to pay the Redemption Price of all Notes to be redeemed. If the Company complies with the provisions of the first sentence of this Section 3.05, on and after the Redemption Date interest shall cease to accrue on the Notes or the portions of Notes called for redemption. 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 this paragraph, interest shall be paid on the unpaid Principal Amount from the Redemption Date and such Note shall remain convertible until such Principal Amount is paid, and to the extent lawful on any interest not paid on such unpaid Principal Amount, 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 the Company's written request, 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.**

(a) Prior to October 1, 2010, the Company may redeem the Notes, in whole or in part, upon not less than 30 nor more than 60 days' notice, for cash at a price (the "**Redemption Price**") equal to 100% of the Principal Amount of such Notes plus accrued and unpaid interest, if any, on such Notes to, but excluding, the Redemption Date, but only if the Sale Price of the Common Stock has exceeded, for at least 20 Trading Days in any consecutive 30 Trading Day period ending on the date the Company gives such notice, 180% of the Conversion Price on each such Trading Day. Commencing on, and including, October 1, 2010 until, but excluding, October 1, 2012, the Company may redeem the Notes, in whole or in part, upon not less than 30 nor more than 60 days' notice, for cash at the Redemption Price, but only if the Sale Price of the Common Stock has exceeded, for at least 20 Trading Days in any consecutive 30 Trading Day period ending on the date the Company gives such notice, 150% of the Conversion Price on each such Trading Day. On and after October 1, 2012, the Company may redeem the Notes, in whole or in part upon not less than 30 nor more than 60 days' notice, for cash at the Redemption Price. Notwithstanding the foregoing, if a Note is redeemed on an Interest Payment Date or during the Record Date Period, then any accrued and unpaid interest shall be paid to the Person in whose name such Note was registered at the close of business on the applicable Regular Record Date and the amount of any such interest to be paid shall be excluded from the Redemption Price.

(b) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Section 3.01 through 3.06.

(c) No Notes may be redeemed by the Company pursuant to this Section 3.07 if the Principal Amount of the Notes has been accelerated (other than as a result of a failure to pay the relevant Redemption Price), and such acceleration has not been rescinded on or prior to the Redemption Date.

**Section 3.08 Mandatory Redemption.**

Except as otherwise provided in Article 11, the Company shall not be required to make mandatory redemption 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 Amount, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes. The Principal Amount, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 10:00 a.m. New York City time on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay the Principal Amount, premium, if any, and interest then due.

The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on the overdue Principal Amount at the rate equal to 1% per annum in excess of the then applicable interest rate on the Notes to the extent lawful; the Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

**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 or agent of the Trustee, Registrar or co-registrar) where Notes may be surrendered for conversion, redemption, repurchase, registration of transfer or 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 .

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 their 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 office of the Trustee located at The Bank of New York Trust Company, as one such office or agency of the Company in accordance with Section 2.03.

**Section 4.03 Reports.**

The Company shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the TIA at the times and in the manner provided pursuant to the TIA; provided that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the trustee within 15 days after the same is so required to be filed with the Commission.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

**Section 4.04 Compliance Certificate.**

(a) The Company shall deliver to the Trustee, within 90 days after the end of each fiscal year, an Officers' Certificate stating that a review of the activities of the Company and its Subsidiaries during the preceding fiscal year have 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) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the Principal Amount of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) The Company shall, so long as any of the Notes are outstanding, deliver to the Trustee, within five Business Days of 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, and shall cause each of its Subsidiaries to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

**Section 4.06 Stay, Extension and Usury Laws.**

The Company 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 (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 Corporate Existence.**

Subject to Article 5, 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 Significant Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Significant Subsidiary and (ii) the rights (charter and statutory), licenses and franchises of the Company and its Significant 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 Significant Subsidiaries, if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Significant Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders of the Notes.

**Section 4.08 Payments for Consent.**

The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder of Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to be paid and is paid to all Holders of the Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

**Section 4.09 Registration and Listing.**

The Company (i) will effect all registrations with, and obtain all approvals by, all governmental authorities that may be necessary under any United States Federal or state law (including the Securities Act, the Exchange Act and state securities and Blue Sky laws) before the shares of Common Stock issuable upon conversion of Notes are issued and delivered, and qualified or listed as contemplated by clause (ii); and (ii) will qualify the shares of Common Stock

Stock required to be issued and delivered upon conversion of Notes, prior to such issuance or delivery, for quotation on the Nasdaq Global Market or, if the Common Stock is not then quoted on the Nasdaq Global Market, on each national securities exchange or quotation system on which outstanding Common Stock is listed or quoted at the time of such delivery (it being understood that the Company shall not be required to register the Notes and the shares of Common Stock under the Securities Act).

#### **Section 4.10 Delivery of Certain Information.**

At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a Holder of a Restricted Note or the holder of shares of Common Stock issued upon conversion thereof, the Company shall promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Holder of Restricted Notes or such holder of shares of Common Stock issued upon conversion of Restricted Notes, or to a prospective purchaser of any such security designated by any such Holder or holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act (or any successor provision thereto) in connection with the resale of any such security; provided, however, that the Company shall not be required to furnish such information in connection with any request made on or after the date which is two years from the later of (i) the date such a security (or any such predecessor security) was last acquired from the Company or (ii) the date such a security (or any such predecessor security) was last acquired from an "affiliate" of the Company within the meaning of Rule 144 under the Securities Act (or any successor provision thereto). "**Rule 144A Information**" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto).

#### **Section 4.11 Waiver of Certain Covenants.**

The Company may omit in any particular instance to comply with any covenant or condition set forth in Sections 4.05 and 4.07 (other than with respect to the existence of the Company (subject to Article 5)) (other than a covenant or condition which under Article 9 cannot be modified or amended without the consent of the Holder of each outstanding Note affected), if before the time for such compliance the Holders shall either (i) through the written consent (or as otherwise in accordance with the Applicable Procedures) of the Holders of at least a majority in aggregate Principal Amount of the Notes then outstanding or (ii) by the adoption of a resolution, at a meeting of Holders of the outstanding Notes at which a quorum is present, by the Holders of at least a majority in Principal Amount of the outstanding Notes represented at such meeting, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee or any Paying or Conversion Agent in respect of any such covenant or condition shall remain in full force and effect.

## ARTICLE 5

### SUCCESSORS

#### Section 5.01 Merger, Consolidation, or Sale of Assets.

The Company may not, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not the Company is the surviving corporation); or (2) sell, lease or otherwise transfer in one transaction or a series of related transactions the consolidated assets of the Company and its Subsidiaries substantially as an entirety to any corporation, limited liability company, partnership or trust organized under the laws of the United States or any of its political subdivisions; unless:

(a) either: (i) the Company is the surviving corporation; or (ii) 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 shall have been made is a Person organized or existing under the laws of the United States, any state thereof or the District of Columbia (provided that if the Person formed by or surviving any such consolidation or merger with the Company is not a corporation, a corporate co-issuer shall also be an obligor with respect to the Notes);

(b) the surviving entity assumes all the obligations of the Company under the Notes and this Indenture pursuant to agreements reasonably satisfactory to the Trustee;

(c) if as a result of such transaction the Notes become convertible into common stock or other securities issued by a third party that is not the successor under the Notes and this Indenture, such third party fully and unconditionally guarantees all obligations of the Company or such successor under the Notes and this Indenture;

(d) at the time of such transaction, no Default or Event of Default shall have happened and be continuing; and

(e) an Officer's Certificate and an Opinion of Counsel, each stating that the consolidation, merger or transfer complies with the provisions herein, have been delivered to the Trustee.

This Section 5.01 shall not apply to a sale, lease, assignment, conveyance or other transfer of assets between or among (i) the Company and Charter Holdco or (ii) the Company and any wholly-owned Subsidiary of Charter Holdco.

#### Section 5.02 Successor Corporation Substituted.

Upon any consolidation, merger, sale, lease or other transfer of the consolidated assets of the Company and its Subsidiaries substantially as an entirety in accordance with Section 5.01, the successor Person formed by such consolidation or into which the Company is merged or to which such transfer is made shall succeed to and (except in the case of a lease) be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named therein as the Company, and (except in the

case of a lease) the Company shall be released from the obligations under the Notes and this Indenture, except with respect to any obligations that arise from, or are related to, such transaction.

## ARTICLE 6

### DEFAULTS AND REMEDIES

#### Section 6.01 Events of Default.

An "Event of Default" occurs if:

- (a) the Company defaults in the payment when due of interest on the Notes and such default continues for a period of 30 days;
- (b) the Company defaults in payment when due, whether at Maturity, on a Redemption Date, a Fundamental Change Repurchase Date, a Five Year Repurchase Date or otherwise, of the Principal Amount of or premium, if any, on the Notes;
- (c) the Company fails to give timely notice of (i) the anticipated effective date of a transaction described in clause (2) of the definition of Change of Control pursuant to Section 10.01 or (ii) a Fundamental Change pursuant to Section 11.01;
- (d) the Company fails to comply with any of its other covenants or agreements in this Indenture for 30 days after written notice thereof has been given to the Company by the Trustee or to the Company and the Trustee by Holders of at least 25% of the aggregate Principal Amount of the Notes then outstanding;
- (e) the Company or any of its Significant Subsidiaries fails to make payment 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 (or the payment of which is guaranteed by the Company or any of its Significant Subsidiaries) whether such Indebtedness or guarantee now exists or is created after the Issue Date, if that default:
  - (1) is caused by a failure to pay at final stated maturity the principal amount 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
  - (2) results in the acceleration of such Indebtedness prior to its express maturity, and, in the case of each of (1) and (2) above, 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 \$100 million or more;
- (f) the Company or any of its Significant Subsidiaries pursuant to or within the meaning of Bankruptcy Law:
  - (i) commences a voluntary case,



- (ii) consents to the entry of an order for relief against it in an involuntary case,
- (iii) consents to the appointment of a custodian of it or for all or substantially all of its property, or
- (iv) makes a general assignment for the benefit of its creditors; or

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

(i) is for relief against the Company or any of its Significant Subsidiaries in an involuntary case;

(ii) appoints a custodian of the Company or any of its Significant Subsidiaries or for all or substantially all of the property of the Company or any of its Significant Subsidiaries; or

(iii) orders the liquidation of the Company or any of its Significant Subsidiaries; and the order or decree remains unstayed and in effect for 60 consecutive days; and

(h) the Company fails to deliver shares of Common Stock, or cash in lieu thereof, when due upon conversion of any Notes, together with cash in respect of any fractional shares and any Redemption Make Whole Amount due pursuant to Section 10.08, and such failure continues for ten days.

#### **Section 6.02 Acceleration.**

In the case of an Event of Default arising from clause (f) or (g) of Section 6.01 with respect to the Company, all outstanding Notes shall become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee by notice to the Company or the Holders of at least 25% in aggregate Principal Amount of the then outstanding Notes may declare all the Notes to be due and payable at their Principal Amount together with accrued and unpaid interest, and thereupon the Trustee may, at its discretion, proceed to protect and enforce the rights of the Holders of Notes by appropriate judicial proceedings.

#### **Section 6.03 Defaults and 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, 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 Existing Defaults.**

Holders, either (i) through the written consent (or as otherwise in accordance with the Applicable Procedures) of the Holders of at least a majority in aggregate Principal Amount of the then outstanding Notes by notice to the Trustee or (ii) by the adoption of a written resolution, at a meeting of Holders of the outstanding Notes at which a quorum is present, by the Holders of at least a majority in Principal Amount of the outstanding Notes represented at such meeting, may on behalf of the Holders of all of the Notes waive an existing Default or Event of Default and its consequences hereunder, except (x) a continuing Default or Event of Default in the payment of the Principal Amount of, premium, if any, or interest on, the Notes (whether at Stated Maturity, a Redemption Date, a Fundamental Change Repurchase Date, a Five Year Repurchase Date or otherwise); (y) in respect of the failure to convert the Notes; or (z) in respect of a covenant or provision hereof which under Article 9 cannot be modified or amended without the consent of each Holder of each outstanding Note affected (provided, however, that 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 aggregate 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 prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability. The Trustee may take any other action which it deems proper that is not inconsistent with any such directive.

**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 and to Convert.**

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of the Principal Amount, premium, if any, and interest on the Note, on or after the Stated Maturity dates (including in connection with a redemption and/or an offer to purchase), or to convert such Note in accordance with Article 10, or to bring suit for the enforcement of any such payment on or after such respective dates or of such right to convert, shall be absolute and unconditional and 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(a) or 6.01(b) 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 Principal Amount of, premium, if any, and interest remaining unpaid on the Notes and interest on overdue Principal Amount 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), their creditors or their 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 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.**

If the Trustee collects any money pursuant to this Article, it shall pay out the money in the following order:

First: to the 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, 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, if any and interest, respectively; and

Third: to the Company or to such party as a court of competent jurisdiction shall direct. The Trustee may fix a record date and payment date for any payment to Holders 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 required to be furnished to the Trustee hereunder 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 (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein).

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

(i) this paragraph does not limit the effect of paragraph (b) 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 grossly 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), and (c) of this Section 7.01.

(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, claim, damage 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.

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or documents.

#### **Section 7.02 Rights of Trustee.**

(a) The Trustee may conclusively rely upon any document (whether in its original or facsimile form) 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 of its own selection and the advice or opinion of such 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 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) Subject to the duty of the Trustee during an Event of Default to act with the required standard of care, 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 reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(g) The Trustee shall not be charged with knowledge of any Default or Event of Default unless either (i) a Responsible Officer of the Trustee shall have actual knowledge of such Default or Event of Default or (ii) written notice of such Default or Event of Default shall have been given to and received by a Responsible Officer of the Trustee by the Company or any Holder and such notice refers to the Notes and this Indenture.

(h) In no event shall the Trustee be responsible or 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.

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

### **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 Section 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, 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 known to a Responsible Officer of the Trustee, the Trustee shall mail to Holders of Notes a notice of the Default or Event of Default within 90 days after the Trustee acquires knowledge thereof. Except in the case of a Default or Event of Default in payment of Principal Amount of, premium, if any, or interest on any Note or in the payment of any obligation in connection with conversion, redemption or repurchase, the Trustee may withhold the notice if and so long as it, 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 date of this Indenture, and for so long as Notes remain outstanding, the Trustee shall mail to the Holders of the Notes a brief report dated as of such reporting date that complies with TIA ss. 313(a) (but if no event described in TIA ss. 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with TIA ss. 313(b)(2). The Trustee shall also transmit by mail all reports as required by TIA ss. 313(c).

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

**Section 7.07 Compensation and Indemnity.**

The Company shall pay to the Trustee from time to time compensation for its acceptance of this Indenture and services hereunder as separately agreed in writing. 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 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 fully indemnify the Trustee against any and all losses, liabilities, claims, damages or expenses (including reasonable legal fees and 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 shall be determined to have been caused by its own gross negligence or willful misconduct. 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 their consent, which consent shall not be unreasonably withheld.

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

The Trustee shall have a lien prior to the Securities as to all property and funds held by it hereunder for any amount owing it or any predecessor Trustee pursuant to this Section 7.07, except with respect to funds held in trust for the benefit of the Holders of particular Securities.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(f) or (g) 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.

The Trustee shall comply with the provisions of TIA ss. 313(b)(2) to the extent applicable.

#### **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 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 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company, or the Holders of at least 10% in Principal Amount of the then outstanding Notes may petition at the expense of the Company any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10, such Holder 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 mail a notice of its succession to Holders property held by it as Trustee to the successor Trustee; provided all sums owing to the Trustee hereunder have been paid as 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 corporation, the successor corporation 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 of America 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 that has a combined capital and surplus of at least \$50 million as set forth in its most recent published annual report of condition. This Indenture shall always have a Trustee who satisfies the requirements of TIA ss. 310(a)(1), (2) and (5). The Trustee is subject to TIA ss. 310(b).

**Section 7.11 Preferential Collection of Claims Against the Company.**

The Trustee is subject to TIA ss. 311(a), excluding any creditor relationship listed in TIA ss. 311(b). A Trustee who has resigned or been removed shall be subject to TIA ss. 311(a) to the extent indicated therein.

## ARTICLE 8

### MEETINGS OF HOLDERS OF NOTES

#### **Section 8.01 Purposes for Which Meetings May be Called.**

A meeting of Holders of Notes may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Notes.

#### **Section 8.02 Call, Notice and Place of Meetings.**

(a) The Trustee may at any time call a meeting of Holders of Notes for any purpose specified in Section 8.01, to be held at such time and at such place in the Borough of Manhattan, The City of New York, as the Trustee shall determine. Notice of every meeting of Holders of Notes, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 12.02, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% in Principal Amount of the outstanding Notes shall have requested the Trustee to call a meeting of the Holders of Notes for any purpose specified in Section 8.01, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Notes in the amount specified, as the case may be, may determine the time and the place in the Borough of Manhattan, The City of New York, for such meeting and may call such meeting for such purposes by giving notice thereof as provided in paragraph (a) of this Section.

#### **Section 8.03 Persons Entitled to Vote at Meetings.**

To be entitled to vote at any meeting of Holders of Notes, a Person shall be (i) a Holder of one or more outstanding Notes, or (ii) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more outstanding Notes by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel. In determining Holders entitled to vote at any meeting of Holders of Notes, Notes owned by the Company, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company, shall be considered as though not outstanding.

#### **Section 8.04 Quorum; Action.**

The Persons entitled to vote a majority in aggregate Principal Amount of the outstanding Notes shall constitute a quorum. In the absence of a quorum within 30 minutes of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of

Notes, be dissolved. In any other case, the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting (subject to repeated applications of this sentence). Notice of the reconvening of any adjourned meeting shall be given as provided in Section 8.02(a), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage of the aggregate Principal Amount of the outstanding Notes which shall constitute a quorum.

Subject to the foregoing, at the reconvening of any meeting adjourned for a lack of a quorum, the Persons entitled to vote 25% in aggregate Principal Amount of the outstanding Notes at the time shall constitute a quorum for the taking of any action set forth in the notice of the original meeting.

At a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid, any resolution and all matters (other than a covenant or condition which under Section 9.02 cannot be modified or amended without the consent of the Holder of each outstanding Note affected) shall be effectively passed and decided if passed or decided by the lesser of (i) the Holders of not less than a majority in aggregate Principal Amount of outstanding Notes and (ii) the Persons entitled to vote not less than 66-2/3% in aggregate Principal Amount of outstanding Notes represented and entitled to vote at such meeting.

Any resolution passed or decisions taken at any meeting of Holders of Notes duly held in accordance with this Section shall be binding on all the Holders of Notes whether or not present or represented at the meeting. The Trustee shall, in the name and at the expense of the Company, notify all the Holders of Notes of any such resolutions or decisions pursuant to Section 12.02.

Section 2.09 shall determine which Notes are considered to be "outstanding" for purposes of this Section 8.04.

#### **Section 8.05 Determination of Voting Rights; Conduct and Adjournment of Meetings.**

(a) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Notes in regard to proof of the holding of Notes and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate.

(b) The Trustee shall, by an instrument in writing, appoint a temporary chairman (which may be the Trustee) of the meeting, unless the meeting shall have been called by the Company or by Holders of Notes as provided in Section 8.02(b), in which case the Company or the Holders of Notes calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by

vote of the Persons entitled to vote a majority in aggregate Principal Amount of the outstanding Notes represented at the meeting.

(c) At any meeting, each Holder of a Note or proxy shall be entitled to one vote for each U.S. \$1,000 Principal Amount of Notes held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Note or proxy.

(d) Any meeting of Holders of Notes duly called pursuant to Section 8.02 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in aggregate Principal Amount of the outstanding Notes represented at the meeting, and the meeting may be held as so adjourned without further notice.

**Section 8.06 Counting Votes and Recording Action of Meetings.**

The vote upon any resolution submitted to any meeting of Holders of Notes shall be by written ballots on which shall be subscribed the signatures of the Holders of Notes or of their representatives by proxy and the Principal Amounts and certificate numbers of the outstanding Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Holders of Notes shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 8.02 and, if applicable, Section 8.04. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

**ARTICLE 9**

**AMENDMENT, SUPPLEMENT AND WAIVER**

**Section 9.01 Without Consent of Holders of Notes.**

Notwithstanding Section 9.02 of this Indenture, the Company and the Trustee may amend or supplement this Indenture or the Notes without the consent of any Holder of a Note:

(a) to cure any ambiguity or correct or supplement any defective provision contained in the Indenture; provided that such modification or amendment does not, in the good faith opinion of the Board of Directors, adversely affect the interests of the Holders of Notes in any material respect; provided further that any amendment made solely to conform the provisions of the Indenture to the description of the Notes in the Exchange Offer Prospectus will not be deemed to adversely affect the interests of the Holders;

- (b) to add covenants for the benefit of the Holders;
- (c) to add additional dates on which Holders may require the Company to repurchase their Notes;
- (d) to surrender any rights or powers conferred upon the Company;
- (e) to provide for the assumption of the Company's obligations to Holders in the case of a merger, consolidation, sale, transfer or lease pursuant to Article 5;
- (f) to increase the conversion rate in the manner described in Section 10.07, provided that the increase will not adversely affect the interests of Holders in any material respect;
- (g) to comply with requirements of the Commission in order to effect or maintain the qualification of this Indenture under the TIA or otherwise as necessary to comply with applicable law;
- (h) to make provision with respect to the conversion rights of Holders pursuant to Section 10.15 or to make provision with respect to the repurchase rights of Holders of Notes pursuant to Section 11.01 or Section 11.02;
- (i) to add or modify any other provision of this Indenture that the Company and the Trustee may deem necessary or desirable and that will not adversely affect the interests of the Holders; or
- (j) to provide for the issuance of Additional Notes.

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, the Trustee shall join with the Company 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, this Indenture or the Notes may be amended or supplemented with either (i) the written consent (or as otherwise in accordance with the Applicable Procedures) of the Holders of at least a majority in aggregate Principal Amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or a tender offer or exchange offer for, Notes), or (ii) by the adoption of a resolution, at a meeting of Holders of the outstanding Notes at which a quorum is present, by the Holders of at least a majority in aggregate Principal Amount of the outstanding Notes represented at such meeting. Section 2.09 shall determine which Notes are considered to be "outstanding" for purposes of this Section 9.02.

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 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 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 supplement, but it shall be sufficient if such consent approves the substance thereof.

After an amendment or supplement under this Section 9.02 becomes effective, the Company shall mail to the Holders of Notes affected thereby a notice briefly describing the amendment or supplement. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental Indenture.

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

- (a) change the Stated Maturity of the Principal Amount of, or any installment of interest on, any Note;
- (b) reduce the Principal Amount of, or the premium, if any, on any Note;
- (c) reduce the interest rate or amount of interest on any Note;
- (d) change the currency of payment of the Principal Amount of, premium, if any, or interest on any Note (including any payment of Redemption Price or Fundamental Change Repurchase Price in respect of such Note);
- (e) impair the right to institute suit for the enforcement of any payment in respect of any Note on or after the Stated Maturity thereof (or, in the case of redemption or any repurchase, on or after the Redemption Date, Fundamental Change Repurchase Date or Five Year Repurchase Date, as the case may be);
- (f) except as permitted by Section 10.15 adversely affect the right of Holders to convert any Note as provided in Article 10;
- (g) reduce the Redemption Make Whole Amount or otherwise modify Section 10.08 of the Indenture in a manner adverse to the Holders;
- (h) modify the provisions of Article 11 relating to notice and repurchase (including those relating to the Fundamental Change Repurchase Date, the Fundamental Change Repurchase Price and the Five Year Repurchase Date) in a manner adverse to the Holders;

(i) modify the provisions of Article 3 in a manner adverse to the Holders;

(j) reduce the requirements of Section 8.04 for quorum or voting, or reduce the percentage in aggregate Principal Amount of the outstanding Notes the consent of whose Holders is required for any such supplemental indenture or the consent of whose Holders is required for any waiver of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences provided for in this Indenture; or

(k) modify any of the provisions of this Section or Section 4.11 or 6.04, except to increase any percentage contained herein or therein or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each outstanding Note affected thereby.

**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 or supplement 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 supplement or amendment becomes effective. An amendment or supplement becomes effective in accordance with its terms and thereafter binds every Holder.

**Section 9.05 Notation on or Exchange of Notes.**

The Trustee may place an appropriate notation about an amendment or supplement 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 or supplement.

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

**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 does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amendment or supplemental Indenture until the Board of Directors approves it in writing. In executing any amended or supplemental indenture, the Trustee shall be provided with and (subject to Section 7.01) shall be fully protected in relying upon, in addition to the documents required by Section 12.04, an Officer's Certificate and an Opinion of Counsel each stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture.

## ARTICLE 10

### CONVERSION OF NOTES

#### Section 10.01 Conversion Privilege and Conversion Rate.

(a) Subject to and upon compliance with the provisions of this Article, at the option of the Holder thereof, any Note may be converted into fully paid and nonassessable shares (calculated as to each conversion to the nearest 1/100th of a share) of Common Stock of the Company at the Conversion Rate, determined as hereinafter provided, in effect at the time of conversion. Such conversion right shall commence on the initial issuance date of the Notes and expire at the close of business on the Business Day prior to the date of Maturity of the Notes, subject, in the case of conversion of any Global Note, to any Applicable Procedures. In case a Note or portion thereof is called for redemption at the election of the Company or the Holder thereof exercises its right to require the Company to repurchase the Note, such conversion right in respect of the Note, or portion thereof so called, shall expire at the close of business on the Business Day prior to the Redemption Date, the Fundamental Change Repurchase Date or the Five Year Repurchase Date, as the case may be, unless the Company defaults in making the payment due upon redemption or repurchase, as the case may be (in each case subject as aforesaid to any Applicable Procedures with respect to any Global Note); provided that, if a Holder has delivered notice of the exercise of its right to have its Note repurchased pursuant to Section 11.01(c) or Section 11.02(c), such Holder may not surrender such Note for conversion until such Holder has withdrawn its election to have its Note repurchased in accordance with Section 11.01 or Section 11.02, as the case may be.

The rate at which shares of Common Stock shall be delivered upon conversion (herein called the “**Conversion Rate**”) shall be initially 293.3868 shares of Common Stock for each U.S. \$1,000 Principal Amount of Notes. The Conversion Rate shall be adjusted (rounded to four decimal places) in certain instances as provided in this Article 10.

(b) If a transaction described in clause (2) of the definition of Change of Control occurs on or prior to October 1, 2012, the Company shall give notice to the Trustee and all Holders (i) at least ten scheduled Trading Days prior to the anticipated Effective Date of such transaction and (ii) within 15 days after the actual Effective Date of such Change of Control. If a Holder elects to convert Notes at any time following the notice described in clause (i) of the preceding sentence until the Fundamental Change Repurchase Date corresponding to such Change of Control as set forth in Section 11.01, the Conversion Rate for each \$1,000 Principal Amount of Notes converted will be increased by an additional number of shares of Common Stock (the “**Additional Shares**”) as described below; *provided* that if the Stock Price is greater than \$39.33 per share (subject in each case to adjustment as described below) or if the Stock Price is less than \$2.62 per share (subject to adjustment), the number of Additional Shares shall be zero. The number of Additional Shares shall be determined by reference to the table attached as Schedule A hereto, based on the Effective Date and the Stock Price; *provided* that if the Stock Price is between two Stock Price amounts in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Price amounts and the two dates, as applicable, based on a 365-day year. The addition to



the Conversion Rate (whether, for the avoidance of doubt, in shares of Common Stock or, if the Company elects to pay cash in lieu of all or a portion of the Common Stock pursuant to Section 10.04, in cash or cash and shares of Common Stock, as applicable) will be made to Holders who elect to convert their Notes in connection with an applicable Change of Control on the later of (i) five Business Days following the Effective Date or (ii) the Conversion Settlement Date for those Notes.

The Stock Prices set forth in the first column of the table in Schedule A hereto and set forth in the *proviso* in the first sentence of the preceding paragraph shall be adjusted as of any date on which the Conversion Rate of the Notes is adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The Company's obligation to deliver Additional Shares shall be subject to adjustment in the same manner as the Conversion Rate as set forth Section 10.07 and Section 10.15.

(c) Notwithstanding the foregoing, the total number of shares of Common Stock issuable upon conversion shall not exceed 381.4028 shares per \$1,000 Principal Amount of Notes, subject to adjustments in the same manner as the Conversion Rate as set forth in Section 10.07 and Section 10.15.

(d) Promptly following the Effective Date, the Company shall calculate the Stock Price and the number of Additional Shares based on the applicable Stock Price and Effective Date. No less than five Business Days following the Effective Date, the Company shall notify the Trustee of the results of such calculations and notify the Holders of the Stock Price and the number of Additional Shares per \$1,000 Principal Amount of Notes. The Company shall issue a press release containing the information described in this paragraph and publish such information on its website.

#### **Section 10.02 Exercise of Conversion Privilege.**

(a) In order to exercise the conversion privilege, the Holder of any Note to be converted shall surrender such Note, duly endorsed in blank, at any office or agency of the Company maintained for that purpose pursuant to Section 4.02, accompanied by a duly signed conversion notice substantially in the form set forth in Exhibit A stating that the Holder elects to convert such Note or, if less than the entire Principal Amount thereof is to be converted, the portion thereof to be converted. The date a Holder complies with these requirements for any Notes shall be the "**Conversion Date**" with respect to such Notes.

(b) Notes surrendered for conversion by a Holder during a Record Date Period must be accompanied by payment in an amount equal to the interest that the Holder is to receive on the Notes on such Interest Payment Date; provided, however, that no such payment need be made (1) if the Company has specified a Redemption Date that is during a Record Date Period, (2) if the Company has specified a Fundamental Change Repurchase Date that is during a Record Date Period or (3) unless any overdue interest exists at the time of conversion with respect to such Note and then only to the extent of such overdue interest.

(c) Notes shall be deemed to have been converted immediately prior to the close of business on the Conversion Date, and at such time the rights of the Holders of such Notes as Holders shall cease, and the Person or Persons entitled to receive the Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Stock at such time. The Company shall issue and deliver to the Trustee, for delivery to the Holder, a certificate or certificates for the number of full shares of Common Stock issuable upon conversion, or cash in lieu thereof pursuant to Section 10.04, together with payment in lieu of any fraction of a share, as provided in Section 10.05 and any Redemption Make Whole Amount as required by Section 10.08 on the “**Conversion Settlement Date**,” which shall be as promptly as practicable, but no later than the fifth Business Day following the Conversion Date; provided that if the Company elects cash settlement pursuant to Section 10.04, the Conversion Settlement Date shall be the third Business Day following the determination of the Conversion Average Price.

(d) Delivery to Holders of the full number of shares of Common Stock, or cash in lieu thereof, into which the Notes are convertible pursuant to this Article 10, together with payment in lieu of any fraction of a share, as provided in Section 10.05 and any Redemption Make Whole Amount as required by Section 10.08 shall be deemed to satisfy the Company’s obligations with respect to such Notes. Accordingly, except to the extent of any such Redemption Make Whole Amount, any accrued but unpaid interest shall be deemed to be paid in full upon conversion, rather than cancelled, extinguished or forfeited.

(e) In the case of any Note which is converted in part only, upon such conversion the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Note or Notes of authorized denominations in an aggregate Principal Amount equal to the unconverted portion of the Principal Amount of such Note. A Note may be converted in part, but only if the Principal Amount of such Note to be converted is any integral multiple of U.S. \$1,000 and the Principal Amount of such Note to remain outstanding after such conversion is equal to U.S. \$1,000 or any integral multiple of \$1,000 in excess thereof.

(f) If shares of Common Stock to be issued upon conversion of a Restricted Note, or Notes to be issued upon conversion of a Restricted Note in part only, are to be registered in a name other than that of the Beneficial Owner of such Restricted Note, then such Holder must deliver to the Conversion Agent a Surrender Certificate, dated the date of surrender of such Restricted Note and signed by such Beneficial Owner, as to compliance with the restrictions on transfer applicable to such Restricted Note. Neither the Trustee nor any Conversion Agent, Registrar or Transfer Agent shall be required to register in a name other than that of the Beneficial Owner, shares of Common Stock or Notes issued upon conversion of any such Restricted Note not so accompanied by a properly completed Surrender Certificate.

### **Section 10.03      Limitation on Beneficial Ownership**

Notwithstanding anything to the contrary in this Article X, no Person will be entitled to acquire Beneficial Ownership of shares of Common Stock delivered upon conversion to the extent (but only to the extent) that such receipt would cause any Person to become, directly or indirectly, a Beneficial Owner of more than the Specified Percentage of the shares of Common

Stock outstanding at such time. With respect to any conversion prior to October 1, 2011, the “**Specified Percentage**” shall be 4.9%, and with respect to any conversion thereafter until Stated Maturity, the Specified Percentage shall be 9.9%. Any purported delivery of shares of Common Stock upon conversion of Notes shall be void and have no effect to the extent (but only to the extent) that such delivery would result in any Person becoming the Beneficial Owner of more than the Specified Percentage of the shares of Common Stock outstanding at such time. If any delivery of shares of Common Stock owed to any Person upon conversion is not made, in whole or in part, as a result of these limitations, the Company’s obligation to make such delivery shall not be extinguished and it shall deliver such shares as promptly as practicable after, but in no event later than two Trading Days after, any such Person gives notice to the Company that such delivery would not result in any Person being the Beneficial Owner of more than the Specified Percentage of the shares of Common Stock outstanding at such time. For the avoidance of doubt, the term “Beneficial Owner” as used in this Section 10.03 shall not include (i) with respect to any Global Note, the nominee of the Depository or any Person having an account with the Depository or its nominee or (ii) with respect to any Non-global Note, the Holder of such Non-global Note unless, in each case, such nominee, account holder or Holder shall also be a Beneficial Owner with respect to such Note.

#### **Section 10.04 Cash Settlement Option**

Upon conversion, the Company shall have the right to deliver, in lieu of shares of Common Stock, cash or a combination of cash and Common Stock. The Company shall inform converting Holders through the Trustee no later than the Business Day prior to the first day of the Conversion Averaging Period if it elects to pay cash in lieu of delivering shares of Common Stock and shall specify in such notice the percentage of the shares of Common Stock that would otherwise be deliverable for which it will pay cash, unless it has already informed the Holders of its election in a notice of redemption pursuant to Section 3.03.

If the Company elects to pay cash upon conversion, such payment will be based on the Conversion Average Price of the Common Stock. If the Company elects cash settlement, the Conversion Settlement Date on which it will deliver to converting Holders the cash and shares of Common Stock, if any, together with the cash or shares, if applicable, with respect to any Redemption Make Whole Amount, shall be the third Business Day following the determination of the Conversion Average Price. The Company shall also deliver cash in lieu of any fractional shares of Common Stock issuable in connection with any conversion of Notes based upon the Conversion Average Price.

#### **Section 10.05 Fractions of Shares.**

No fractional shares of Common Stock shall be issued upon conversion of any Note or Notes. If more than one Note shall be surrendered for conversion at one time by the same Beneficial Owner, the number of full shares which shall be issuable upon conversion thereof shall be computed on the basis of the aggregate Principal Amount of the Notes (or specified portions thereof) so surrendered. Instead of any fractional share of Common Stock which would otherwise be issuable upon conversion of any Note or Notes (or specified portions thereof), unless Section 10.04 shall apply, the Company shall calculate and pay a cash adjustment in respect of such fraction (calculated to the nearest 1/100th of a share) in an amount equal to the

same fraction of the Sale Price at the close of business on the Conversion Date (or round up the number of shares of Common Stock issuable upon conversion of any Note or Notes to the nearest whole share).

#### **Section 10.06 Exchange in Lieu of Conversion**

When a Holder surrenders Notes for conversion, the Company may, unless it has called the relevant Notes for redemption, direct the Conversion Agent to surrender, on or prior to the date two Business Days following the Conversion Date, such Notes to a financial institution designated by the Company for exchange in lieu of conversion. The Company must notify such financial institution of the applicable Conversion Date. In order to accept any such Notes, the designated institution must agree to deliver, in exchange for such Notes, a number of shares of Common Stock equal to the Conversion Rate in effect at such time, or at its option, cash or a combination of cash and shares of Common Stock in lieu thereof, calculated based on the Conversion Average Price, plus cash for any fractional shares.

If the designated institution accepts any such Notes, it will deliver the appropriate number of shares of Common Stock (and cash, if any), or cash in lieu thereof, to the Conversion Agent and the Conversion Agent will deliver those shares or cash to the Holder. Any Notes exchanged by the designated institution will remain outstanding. If the designated institution agrees to accept any Notes for exchange but does not timely deliver the related consideration, the Company will, as promptly as practical thereafter, but not later than (1) the fifth Business Day following the Conversion Date, or (2) if the designated institution elects to deliver cash or a combination of cash and shares of Common Stock, the third Business Day following the determination of the Conversion Average Price, convert the Notes and deliver shares of Common Stock, or, at the Company's option cash in lieu thereof based on such Conversion Average Price.

If the designated institution declines to accept any Notes surrendered for exchange, the Company will convert those Notes into shares of Common Stock, or cash in lieu thereof at the option of the Company.

#### **Section 10.07 Adjustment of Conversion Rate.**

The Conversion Rate shall be subject to adjustments from time to time as follows:

(a) In case the Company shall pay or make a dividend or other distribution in shares of Common Stock, or shall effect a subdivision into a greater number of shares of Common Stock or a combination into a lesser number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the Ex-date for such dividend or other distribution, or for such subdivision or combination, as the case may be, shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

$CR_0$  = the Conversion Rate in effect immediately prior to the Ex-date for such dividend or distribution, or the effective date of such subdivisions or combinations of the Common Stock, as the case may be

$CR_1$  = the Conversion Rate in effect immediately after the Ex-date for such dividend or distribution, or the effective date of such subdivisions or combinations of the Common Stock, as the case may be

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the Ex-date for such dividend or distribution, or the effective date of such subdivisions or combinations of the Common Stock, as the case may be

$OS_1$  = the number of shares of Common Stock that would be outstanding immediately after such dividend or distribution, or the effective date of such subdivisions or combinations of the Common Stock, as the case may be

If, after any such Ex-date, any dividend or distribution is not in fact paid or the outstanding shares of Common Stock are not subdivided or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or subdivide or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Rate that would have been in effect if such Ex-date had not been fixed.

(b) In case the Company shall issue rights or warrants to all holders of its Common Stock entitling them to subscribe for or purchase shares of Common Stock for a period expiring 45 days or less from the date of issuance of such rights or warrants at a price per share less than the average of the Sale Prices of the Common Stock for the ten consecutive Trading Days prior to the Business Day immediately preceding the announcement of the issuance of such rights, options or warrants, the Conversion Rate in effect at the opening of business on the day following the Ex-date shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

$CR_0$  = the Conversion Rate in effect immediately prior to the Ex-date for such distribution

$CR_1$  = the Conversion Rate in effect immediately after the Ex-date for such distribution

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the Ex-date of such distribution

$X$  = the total number of shares of Common Stock issuable pursuant to such rights

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights divided by the average of the Sale Prices of the Common Stock for the ten consecutive Trading Days ending on the Business Day immediately preceding the Ex-date for such distribution

If, after any such Ex-date, any such rights, options or warrants are not in fact issued, or are not exercised prior to the expiration thereof, the Conversion Rate shall be immediately readjusted, effective as of the date such rights, options or warrants expire, or the date the Board of Directors determines not to issue such rights, options or warrants, to the Conversion Rate that would have been in effect if the unexercised rights, options or warrants had never been granted or such Ex-date had not been fixed, as the case may be.

(c) In case the Company shall pay a dividend or distribution consisting exclusively of cash to all holders of its Common Stock, the Conversion Rate in effect at the opening of business on the day following the Ex-date for such dividend or distribution shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Ex-date for such distribution

CR<sub>1</sub> = the Conversion Rate in effect immediately after the Ex-date for such distribution

SP<sub>0</sub> = the Current Market Price

C = the amount in cash per share distributed by the Company to holders of Common Stock

In the event that C is greater than or equal to SP<sub>0</sub>, in lieu of the adjustment contemplated, Holders will be entitled to participate ratably in the cash distribution as though their Notes had been converted to shares of Common Stock on the applicable date of calculation for the amounts to be received by holders of Common Stock. If after any such Ex-date, any such dividend or distribution is not in fact made, the Conversion Rate shall be immediately readjusted, effective as of the date of the Board of Directors determines not to make such dividend or distribution, to the Conversion Rate that would have been in effect if such Ex-date had not been fixed.

(d) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock evidences of its indebtedness, shares of any class of capital stock or other property (including cash or assets or securities, but excluding (i) any rights, options or warrants referred to in Section 10.07(b), (ii) any dividend or distribution paid exclusively in cash, (iii) any dividend or distribution referred to in Section 10.07(a) or 10.07(e), and (iv) mergers or consolidations to which Section 10.15 applies), the Conversion Rate in effect at the opening of

business on the day following the Ex-date for such dividend or distribution shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Ex-date for such distribution

CR<sub>1</sub> = the Conversion Rate in effect immediately after the Ex-date for such distribution

SP<sub>0</sub> = the Current Market Price

FMV = the fair market value (as determined by the Board of Directors) of the shares of capital stock, evidences of indebtedness, assets or property distributed with respect to each outstanding share of Common Stock on the Ex-date for such distribution

In the event that FMV is greater than or equal to SP<sub>0</sub>, in lieu of the adjustment contemplated, Holders will be entitled to participate ratably in the relevant distribution as though their Notes had been converted to shares of Common Stock on the applicable date of calculation for the amounts to be received by holders of Common Stock. If after any such Ex-date, any such dividend or distribution is not in fact made, the Conversion Rate shall be immediately readjusted, effective as of the date of the Board of Directors determines not to make such dividend or distribution, to the Conversion Rate that would have been in effect if such Ex-date had not been fixed.

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("**Trigger Event**"):

- (i) are deemed to be transferred with such shares of Common Stock,
- (ii) are not exercisable, and
- (iii) are also issued in respect of future issuances of Common Stock

shall be deemed not to have been distributed for purposes of this Section 10.07(d) (and no adjustment to the Conversion Rate under this Section 10.07(d) will be required) until the occurrence of the earliest Trigger Event. If such right or warrant is subject to subsequent events, upon the occurrence of which such right or warrant shall become exercisable to purchase different securities, evidences of indebtedness or other assets or entitle the holder to purchase a different number or amount of the foregoing or to purchase any of the foregoing at a different purchase price, then the occurrence of each such event shall be deemed to be the date of issuance

and Ex-date with respect to a new right or warrant (and a termination or expiration of the existing right or warrant without exercise by the holder thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto, that resulted in an adjustment to the Conversion Rate under this Section 10.07(d):

(1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder of Common Stock with respect to such rights or warrant (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and

(2) in the case of such rights or warrants all of which shall have expired or been terminated without exercise, the Conversion Rate shall be readjusted as if such rights and warrants had never been issued.

For purposes of this Section 10.07(d) and Section 10.07(a) and 10.07(b), any dividend or distribution to which this Section 10.07(d) applies that also includes shares of Common Stock or a subdivision or combination of Common Stock to which Section 10.07(a) applies, or rights or warrants to subscribe for or purchase shares of Common Stock to which Section 10.07(b) applies (or any combination thereof), shall be deemed instead to be:

(1) a dividend or distribution of the evidences of indebtedness, assets, shares of capital stock, rights or warrants other than such shares of Common Stock, such subdivision or combination or such rights or warrants to which Section 10.07(a) and 10.07(b) apply, respectively (and any Conversion Rate increase required by this 10.07(d) with respect to such dividend or distribution shall then be made), immediately followed by

(2) a dividend or distribution of such shares of Common Stock, such subdivision or combination or such rights or warrants (and any further Conversion Rate increase required by Section 10.07(a) and 10.07(b) with respect to such dividend or distribution shall then be made), except that any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the Ex-date" within the meaning of Section 10.07(a) and any reduction or increase in the number of shares of Common Stock resulting from such subdivision or combination shall be disregarded in connection with such dividend or distribution.



(e) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of Capital Stock of, or similar equity interests in, a Subsidiary or other business unit of the Company (a “**Spin-Off**”), the Conversion Rate in effect immediately before 5:00 p.m. New York City time, on the fifteenth Trading Day immediately following, and including, the effective date of the Spin-Off shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

- $CR_0$  = the Conversion Rate in effect immediately prior to the fifteenth Trading Day immediately following, and including, the effective date of the Spin-Off
- $CR_1$  = the Conversion Rate in effect immediately after the fifteenth Trading Day immediately following, and including, the effective date of the Spin-Off
- $FMV_0$  = the average of the Sale Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the 10 Trading Days immediately following, and including, the fifth Trading Day immediately following the effective date of the Spin-Off
- $MP_0$  = the average of the Sale Prices of the Common Stock on the 10 consecutive Trading Day period immediately following, and including, the fifth Trading Day immediately following the effective date of the Spin-Off

(f) In case the Company or any Subsidiary purchases all or any portion of the Common Stock pursuant to a tender offer or exchange offer and the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the Current Market Price per share on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the “**Expiration Date**”), the Conversion Rate shall be will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

- $CR_0$  = the Conversion Rate in effect on the Expiration Date
- $CR_1$  = the Conversion Rate in effect immediately after the Expiration Date
- $FMV$  = the fair market value (as determined by the Board of Directors) of the aggregate value of all cash and any other consideration paid or payable for shares of

Common Stock validly tendered or exchanged and not withdrawn as of the Expiration Date (the “**Purchased Shares**”)

OS<sub>1</sub> = the number of shares of Common Stock outstanding immediately after the Expiration Date less any Purchased Shares

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately after the Expiration Date, plus any Purchased Shares

SP<sub>1</sub> = the Sale Price of the Common Stock on the Trading Day next succeeding the Expiration Date

Such increase (if any) shall become effective immediately prior to the opening of business on the Trading Day next succeeding the Expiration Date. In the event that the Company is obligated to purchase shares pursuant to any such tender offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made. If the application of this Section 10.07(f) to any tender or exchange offer would result in a decrease in the Conversion Rate, no adjustment shall be made for such tender or exchange offer under this Section 10.07(f).

(g) In case of a tender or exchange offer made by a Person other than the Company or any Subsidiary for an amount that increases the offeror’s ownership of Common Stock to more than twenty-five percent (25%) of the Common Stock outstanding and shall involve the payment by such Person of consideration per share of Common Stock having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) that as of the last date (the “**OfferExpiration Date**”) tenders or exchanges may be made pursuant to such tender or exchange offer (as it shall have been amended) exceeds the Sale Price per share of the Common Stock on the Trading Day next succeeding the Offer Expiration Date, and in which, as of the Offer Expiration Date the Board of Directors is not recommending rejection of the offer, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

CR<sub>0</sub> = the Conversion Rate in effect on the Offer Expiration Date

CR<sub>1</sub> = the Conversion Rate in effect immediately after the Offer Expiration Date

FMV = the fair market value (as determined by the Board of Directors) of the aggregate consideration payable to holders of Common Stock based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all

shares validly tendered or exchanged and not withdrawn as of the Expiration Date (the shares deemed so accepted, up to any such maximum, being referred to as the “**Accepted Purchased Shares**”)

$OS_1$  = the number of shares of Common Stock outstanding immediately after the Offer Expiration Date less any Accepted Purchased Shares

$OS_0$  = the number of shares of Common Stock outstanding immediately after the Offer Expiration Date, including any Accepted Purchased Shares

Such adjustment shall become effective immediately prior to the opening of business on the Trading Day next succeeding the Offer Expiration Date. In the event that such Person is obligated to purchase shares pursuant to any such tender or exchange offer, but such Person is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made. Notwithstanding the foregoing, the adjustment described in this Section 10.07(g) shall not be made if, as of the Offer Expiration Date, the offering documents with respect to such offer disclose a plan or intention to cause the Company to engage in any transaction described in Section 10.15.

(h) “**Current Market Price**” of the Common Stock on any day means the average of the Sale Price of the Common Stock for each of the 10 consecutive Trading Days ending on the earlier of the day in question and the day before the Ex-date with respect to the issuance or distribution requiring such computation.

(A) Notwithstanding the foregoing, whenever successive adjustments to the Conversion Rate are called for pursuant to this Section 10.07, such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this Section 10.07 and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

(i) “**Ex-date,**” when used:

(A) with respect to any issuance or distribution, means the first date on which the shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance or distribution;

(B) with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective, and

(C) with respect to any tender or exchange offer, means the first date on which the Common Stock trades regular way on such exchange or in such market after the Expiration Date or Offer Expiration Date of such offer.

(j) “**fair market value**” shall mean the amount that a willing buyer would pay a willing seller in an arm’s length transaction.

(k) For purposes of this Section 10.07, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(l) Adjustments to the Conversion Rate under this Section 10.07 shall be rounded to the fourth decimal point and all other calculations under this Section 10.07 shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be.

(m) The Company may make increases in the Conversion Rate by any amount for any period of at least 20 days. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall give notice of the increase to the Holders in the manner provided in Section 12.02 at least fifteen (15) days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect. The Company may make such increases in the Conversion Rate, to the extent permitted by law and subject to applicable rules of The Nasdaq Stock Market, in addition to the increases set forth above, as the Board of Directors deems advisable to avoid or diminish any income tax to holders of Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

(n) To the extent that the Company has a rights plan in effect upon conversion of the Notes into Common Stock, each converting Holder shall receive, in addition to shares of Common Stock, the rights under the rights plan corresponding to the shares of Common Stock received upon conversion, unless prior to any conversion, the rights shall have separated from the shares of Common Stock, in which case the Conversion Rate shall be adjusted as of the date of such separation as if the Company had distributed to all holders of Common Stock shares of the Company’s Capital Stock, evidences of indebtedness or other property as provided in Section 10.07(d) , subject to readjustment in the event of the expiration, termination or redemption of such rights.

#### **Section 10.08 Interest Make Whole Upon Conversion.**

*Redemption Make Whole Amount.* Any holders who convert Notes after a notice of redemption has been sent pursuant to the terms of Article 3 and prior to October 1, 2012 shall receive, for each \$1,000 Principal Amount of Notes converted, in addition to a number of shares of Common Stock determined pursuant to Section 10.01, or cash in lieu thereof pursuant to Section 10.04, the Redemption Make Whole Amount. The “**Redemption Make Whole Amount**” shall equal the present value of the interest on the Notes converted that would have

been payable for the period from and including the Redemption Date, to but excluding October 1, 2012.

The Redemption Make Whole Amount shall be calculated by discounting the amount of such interest on a semi-annual basis using a discount rate equal to 3.0% plus the arithmetic mean of the yields under the respective headings "This Week" and "Last Week" published in the Statistical Release under the caption "Treasury Constant Maturities" for the maturity (rounded to the nearest month) corresponding to the period from and including the Redemption Date to but excluding October 1, 2012. If no maturity exactly corresponds to such maturity, yields for the two published maturities most closely corresponding to such maturity shall be calculated pursuant to the immediately preceding sentence and the applicable rate shall be interpolated or extrapolated from such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. For the purpose of calculating the applicable rate, the most recent Statistical Release published prior to the date of determination of the Redemption Make Whole Amount shall be used.

The term "**Statistical Release**" shall mean the statistical release designated "H.15(519)" or any successor publication which is published weekly by the Federal Reserve System and which establishes yields on actively traded U.S. government securities adjusted to constant maturities or, if such statistical release is not published at the time of any determination under this Section 10.08, then such other reasonably comparable index that the Company shall designate.

The Company may pay the Redemption Make Whole Amount in cash or in shares of Common Stock, with the number of such shares determined based on the average of the Sale Prices of the Common Stock over the ten Trading Days immediately preceding the applicable Conversion Date. If the Company elects to pay the Redemption Make Whole Amount in shares of Common Stock, the number of shares deliverable by the Company, together with the shares of Common Stock deliverable upon conversion pursuant to Section 10.01, shall not exceed 381.4028 shares of Common Stock per \$1,000 Principal Amount of Notes, subject to the same adjustments as the Conversion Rate pursuant to Section 10.07 and Section 10.15, and the Company shall deliver cash with respect to the remainder of the Redemption Make Whole Amount, if any.

**Section 10.09 Notice of Adjustments of Conversion Rate.**

Whenever the Conversion Rate is adjusted as herein provided:

(a) the Company shall compute the adjusted Conversion Rate in accordance with Section 10.07 and shall prepare a certificate signed by the Chief Financial Officer of the Company setting forth the adjusted Conversion Rate and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall promptly be filed with the Trustee and with each Conversion Agent; and

(b) upon each such adjustment, a notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate shall be required, and as soon as practicable after it is required, such notice shall be provided by the Company to all Holders in

accordance with Section 12.02. Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate or the information and calculations contained therein, except to exhibit the same to any Holder of Notes desiring inspection thereof at its office during normal business hours, and shall not be deemed to have knowledge of any adjustment in the Conversion Rate unless and until a Responsible Officer of the Trustee shall have received such a certificate. Until a Responsible Officer of the Trustee receives such a certificate, the Trustee and each Conversion Agent may assume without inquiry that the last Conversion Rate of which the Trustee has knowledge of remains in effect.

**Section 10.10 Notice of Certain Corporate Action.**

In case:

- (1) the Company shall declare a dividend (or any other distribution) on its Common Stock; or
- (2) the Company shall authorize the granting to all or substantially all of the holders of its Common Stock of rights, options or warrants to subscribe for or purchase any shares of capital stock of any class or of any other rights; or
- (3) of any reclassification of the Common Stock, or of any consolidation, merger or share exchange to which the Company is a party and for which approval of any stockholders of the Company is required, or of the conveyance, sale, transfer or lease of the assets of the Company and its Subsidiaries substantially as an entirety; or
- (4) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

then the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of Notes pursuant to Section 4.02, and shall cause to be provided to all Holders in accordance with Section 12.02, at least 20 days (or 10 days in any case specified in clause (1) or (2) above) prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights, options or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, conveyance, transfer, sale, lease, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, conveyance, transfer, sale, lease, dissolution, liquidation or winding up. Neither the failure to give such notice or the notice referred to in the following paragraph nor any defect therein shall affect the legality or validity of the proceedings described in clauses (1) through (4) of this Section 10.10. If at the time the Trustee shall not be the conversion agent, a copy of such notice shall also forthwith be filed by the Company with the Trustee.

The Company shall cause to be filed at the Corporate Trust Office and each office or agency maintained for the purpose of conversion of Notes pursuant to Section 4.02, and shall

cause to be provided to all Holders in accordance with Section 12.02, notice of any tender offer by the Company or any Subsidiary for all or any portion of the Common Stock at or about the time that such notice of tender offer is provided to the public generally.

**Section 10.11 Company to Reserve Common Stock.**

The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of Notes, the full number of shares of Common Stock then issuable upon the conversion of all outstanding Notes.

**Section 10.12 Taxes on Conversions.**

Except as provided in the next sentence, the Company will pay any and all taxes and duties, excluding any taxes relating to the net or gross income or gain to the Holder on conversion, that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Notes pursuant hereto. The Company shall not, however, be required to pay any tax or duty which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the Holder of the Note or Notes to be converted, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such tax or duty, or has established to the satisfaction of the Company that such tax or duty has been paid.

**Section 10.13 Covenant as to Common Stock.**

The Company agrees that all shares of Common Stock which may be delivered upon conversion of Notes, upon such delivery, will have been duly authorized and validly issued and will be fully paid and nonassessable and, except as provided in Section 10.12, the Company will pay all taxes, liens and charges with respect to the issue thereof.

**Section 10.14 Cancellation of Converted Notes.**

Subject to Section 10.06, all Notes delivered for conversion shall be delivered to the Trustee or its agent to be canceled by or at the direction of the Trustee, which shall dispose of the same as provided in Section 2.12.

**Section 10.15 Provision in Case of Consolidation, Merger or Sale of Assets.**

In case of any recapitalization, reclassification or change in the Common Stock (other than changes resulting from a subdivision or combination), a consolidation, merger or combination of the Company with or into any other Person, any merger of another Person with or into the Company (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Company) or any conveyance, sale, transfer or lease of the consolidated assets of the Company and its Subsidiaries substantially as an entirety, or any statutory share exchange, in each case as a result of which holders of Common Stock are entitled to receive stock, other securities, other property or assets (including cash or any combination thereof) with respect to or in exchange for the Common Stock, the Person formed by such consolidation or resulting from such merger or

which acquires such assets, as the case may be, shall execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Note then outstanding shall have the right thereafter, during the period such Note shall be convertible as specified in Section 10.01, to convert such Note only into the kind and amount of securities, cash and other property receivable upon such recapitalization, reclassification, change, consolidation, merger, combination, sale, lease, transfer or statutory share exchange by a holder of the number of shares of Common Stock of the Company into which such Note might have been converted immediately prior to such recapitalization, reclassification, change, consolidation, merger, combination, sale, lease, transfer or statutory share exchange, assuming such holder of Common Stock of the Company is not (A) a Person with which the Company consolidated or merged with or into or which merged into or with the Company or to which such conveyance, sale, transfer or lease was made, as the case may be (a “**Constituent Person**”), or (B) an Affiliate of a Constituent Person. If the holders of the Common Stock have the right to elect the kind or amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer, or lease for each share of Common Stock of the Company held immediately prior to such recapitalization, reclassification, change, consolidation, merger, combination, sale, lease, transfer or statutory share exchange by others than a Constituent Person or an Affiliate thereof, then for the purpose of this Section 10.15 the kind and amount of securities, cash and other property receivable upon such recapitalization, reclassification, change, consolidation, merger, combination, sale, lease, transfer or statutory share exchange by the holders of each Non-electing Share shall be deemed to be the weighted average of the types and amounts received by such holders upon the occurrence of such transaction or event. Such supplemental indenture shall provide for adjustments which, for events subsequent to the effective date of such supplemental indenture, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 10.

The above provisions of this Section 10.15 shall similarly apply to successive consolidations, mergers, conveyances, sales, transfers or leases. Notice of the execution of such a supplemental indenture shall be given by the Company to the Holder of each Note as provided in Section 12.02 within 20 days after execution thereof. Neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any such supplemental indenture relating either to the kind or amount of shares of stock or other securities or property or cash receivable by Holders of Notes upon the conversion of their Notes after any such consolidation, merger, conveyance, transfer, sale or lease or to any such adjustment, but may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, an Opinion of Counsel with respect thereto, which the Company shall cause to be furnished to the Trustee.

#### **Section 10.16      Responsibility of Trustee for Conversion Provisions.**

The Trustee, subject to the provisions of Section 7.01, and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Notes to determine whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, herein or in any supplemental indenture provided to be employed, in making the same, or whether a supplemental indenture need be entered into. Neither the Trustee nor any Conversion Agent shall be accountable with respect to the validity or value (or the kind or amount) of any



Common Stock, or of any other Notes or property or cash, which may at any time be issued or delivered upon the conversion of any Note; and it or they do not make any representation with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to make or calculate any cash payment or to issue, transfer or deliver any shares of Common Stock or share certificates or other Notes or property or cash upon the surrender of any Note for the purpose of conversion. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to comply with any of the covenants of the Company contained in this Article.

## ARTICLE 11

### REPURCHASE OF NOTES AT THE OPTION OF THE HOLDER UPON A FUNDAMENTAL CHANGE

#### Section 11.01 Right to Require Repurchase upon a Fundamental Change.

(a) If a Fundamental Change occurs, each Holder shall have the right, at the Holder's option, to require the Company to repurchase, and upon the exercise of such right the Company shall repurchase, for cash some or all of such Holder's Notes not theretofore called for redemption, or any portion of the Principal Amount thereof that is equal to U.S. \$1,000 or any integral multiple of U.S. \$1,000 in excess thereof (provided that no single Note may be repurchased in part unless the portion of the Principal Amount of such Note to be outstanding after such repurchase is equal to U.S. \$1,000 or integral multiples of U.S. \$1,000 in excess thereof). The Company shall offer a payment (the "**Fundamental Change Repurchase Price**") equal to 100% of the Principal Amount of the Notes to be repurchased plus any accrued and unpaid interest to but excluding the Fundamental Change Repurchase Date, unless such Fundamental Change Repurchase Date falls during a Record Date Period, in which case the Company will pay the full amount of accrued and unpaid interest payable on such Interest Payment Date to the holder of record at the close of business on the corresponding Regular Record Date. Whenever in this Indenture there is a reference, in any context, to the Principal Amount of any Note as of any time, such reference shall be deemed to include reference to the Fundamental Change Repurchase Price payable in respect of such Note to the extent that such Fundamental Change Repurchase Price is, was or would be so payable at such time, and express mention of the Fundamental Change Repurchase Price in any provision of this Indenture shall not be construed as excluding the Fundamental Change Repurchase Price in those provisions of this Indenture when such express mention is not made.

(b) Within 20 days following any Fundamental Change, the Company shall mail or cause to be mailed a notice to each Holder (with a copy to the Trustee) describing the transaction or transactions that constitute the Fundamental Change and stating:

(i) the repurchase date, which shall be a date specified by the Company that is not less than 20 nor more than 35 Business Days from the date such notice is mailed (the "**Fundamental Change Repurchase Date**");

(ii) the time by which the repurchase right must be exercised, which shall be the close of business on the Fundamental Change Repurchase Date;

(iii) the Fundamental Change Repurchase Price;

(iv) a description of the procedure which a Holder must follow to exercise a repurchase right, and the place or places where, or procedures by which, such Notes are to be surrendered for payment of the Fundamental Change Repurchase Price;

(v) that on the Fundamental Change Repurchase Date the Fundamental Change Repurchase Price will become due and payable upon each such Note designated by the Holder to be repurchased, and that interest thereon shall cease to accrue on and after said date;

(vi) the Conversion Rate then in effect, the date on which the right to convert the Notes to be repurchased will terminate (which shall be the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date) and the place or places where, or procedures by which, such Notes may be surrendered for conversion;

(vii) the place or places that the Note with the "Option of Holder to Purchase" as specified on the reverse of the Note shall be delivered;

(viii) that any Note not tendered shall continue to accrue interest;

(ix) that Holders shall be entitled to withdraw their election if the Paying Agent receives, prior to 5:00 p.m., New York City time on the Fundamental Change Repurchase Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the Principal Amount of Notes delivered for purchase, and a written statement that (a) states such Holder is withdrawing its election to have the Notes purchased, (b) if certificated Notes have been issued, states the certificate number of the withdrawn Notes, (c) if the Notes are not certificated, contains such statements as required by the Depositary and (d) states the Principal Amount, if any, that remains subject to the Repurchase Notice; and

(x) 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 \$1,000 in Principal Amount or an integral multiple thereof.

No failure of the Company to give the foregoing notices or defect therein shall limit any Holder's right to exercise a repurchase right or affect the validity of the proceedings for the repurchase of Notes.

If any of the foregoing provisions or other provisions of this Section 11.01 are inconsistent with applicable law, such law shall govern.

(c) To exercise a repurchase right pursuant to this Section 11.01, a Holder shall deliver to the Trustee on or before the Fundamental Change Repurchase Date (i) written notice (the "**Repurchase Notice**") of the Holder's exercise of such right, which notice, if the Note is certificated, shall be in the form set forth on the reverse of the Note duly completed or, if the

Note is represented by a Global Note, shall set forth the name of the Holder, the Principal Amount of the Notes to be repurchased (and, if any Note is to be repurchased in part, the certificate number thereof, the portion of the Principal Amount thereof to be repurchased and the name of the Person in which the portion thereof to remain outstanding after such repurchase is to be registered) and a statement that an election to exercise the repurchase right is being made thereby and (ii) the Notes with respect to which the repurchase right is being exercised. Holders may withdraw such election at any time prior to 5:00 p.m., New York City time on the Fundamental Change Repurchase Date. The right of the Holder to convert the Notes with respect to which the repurchase right is being exercised shall continue until 5:00 p.m., New York City time on the Business Day prior to the Fundamental Change Repurchase Date.

(d) In the event a repurchase right shall be exercised in accordance with the terms hereof, on the Fundamental Change Repurchase Date, the Company shall accept for payment all Notes or portions thereof properly tendered, deposit with or pay or cause to be paid to the Trustee the Fundamental Change Repurchase Price in cash for payment by the Trustee to the Holder on the Fundamental Change Repurchase Date; provided, however, that installments of interest that mature on or prior to the Fundamental Change Repurchase Date shall be payable in cash to the Holders of such Notes, or one or more Predecessor Notes, registered as such at the close of business on the relevant Regular Record Date; and deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers' Certificate stating the aggregate Principal Amount of Notes or portions thereof being purchased by the Company.

(e) If any Note (or portion thereof) surrendered for repurchase shall not be so paid on the Fundamental Change Repurchase Date, the Principal Amount of such Note (or portion thereof, as the case may be) shall, until paid, bear interest to the extent permitted by applicable law from the Fundamental Change Repurchase Date at the rate specified therein, and each Note shall remain convertible into Common Stock until the Principal Amount of such Note (or portion thereof, as the case may be) shall have been paid or duly provided for.

(f) Any Note which is to be repurchased only in part shall be surrendered to the Trustee (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or its attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and mail (or cause to be transferred by book entry) to the Holder of such Note without service charge, a new Note or Notes, containing identical terms and conditions, each in an authorized denomination in aggregate Principal Amount equal to and in exchange for the unrepurchased portion of the Principal Amount of the Note so surrendered; provided that each such new Note shall be in Principal Amount of \$1,000 or an integral multiple thereof.

(g) All Notes delivered for repurchase shall be delivered to the Trustee to be canceled at the direction of the Trustee, which shall dispose of the same as provided in Section 2.12.

(h) In connection with any purchase of Notes pursuant to this Section 11.01, the Company will comply with Rule 13e-4 under the Exchange Act to the extent applicable at that time.

(i) No Notes may be purchased by the Company pursuant to this Section 11.01 if the Principal Amount of the Notes has been accelerated, and such acceleration has not been rescinded on or prior to such date.

## **Section 11.02 Repurchase of Notes at the Option of Holders.**

(a) Each Holder shall have the right, at such Holder's option, to require the Company to repurchase such Holder's Notes, or any portion thereof that is an integral multiple of \$1,000 Principal Amount, in cash, on October 1, 2012, October 1, 2017 and October 1, 2022 (each a "**Five Year Repurchase Date**"), at a repurchase price of 100% of the Principal Amount of the Notes being repurchased, plus accrued and unpaid interest to, but excluding, the Five Year Repurchase Date. Notwithstanding the foregoing, if the Five Year Repurchase Date is during the Record Date Period, then any accrued and unpaid interest shall be paid to the Person in whose name such Note was registered at the close of business on the applicable Regular Record Date and the amount of any such interest to be paid shall be excluded from the repurchase price.

(b) Not less than 20 Business Days prior to each Five Year Repurchase Date, the Company shall mail or cause to be mailed to all Holders of record on such date (with a copy to the Trustee) a written notice to Holders setting forth the information specified in this Section 11.02(b). Such notice shall:

(i) state the repurchase price and the Five Year Repurchase Date to which such notice relates;

(ii) state that Holders must exercise their right to elect to repurchase prior to 5:00 p.m., New York City time, on the Business Day immediately prior to the applicable Five Year Repurchase Date;

(iii) include a form of Repurchase Notice;

(iv) state the name and address of the Trustee and any Paying Agent;

(v) state the Notes must be surrendered to the Paying Agent to collect the repurchase price;

(vi) state that a Holder may withdraw its Repurchase Notice if such Holder shall deliver to the Paying Agent, at any time prior to 5:00 p.m., New York City time, on the Business Day immediately prior to the applicable Five Year Repurchase Date, a notice of withdrawal stating the following: (A) the certificate numbers of the Notes to be withdrawn (if the Note is certificated) or that the notice of withdrawal complies with the Applicable Procedures (if the Note is represented by Global Note), (B) the Principal Amount of the withdrawn Notes and (C) the Principal Amount of Notes of such Holder, if any, that remains subject to the Repurchase Notice, which must be in Principal Amounts of \$1,000 or an integral multiple of \$1,000;

(vii) that the notes are convertible pursuant to Article X and may be converted only if the Repurchase Notice is withdrawn in accordance with the terms of the Indenture;

(viii) state that, unless the Company defaults in making payment of the repurchase price, interest on the Notes covered by any Repurchase Notice shall cease to accrue on and after the Five Year Repurchase Date; and

(ix) state the CUSIP number of the Notes, if CUSIP numbers are then in use.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes.

(c) To exercise a repurchase right pursuant to this Section 11.02, a Holder shall deliver to the Paying Agent, during the period beginning 20 Business Days prior to the applicable Five Year Repurchase Date and ending at 5:00 p.m., New York City time, on the Business Day immediately prior to the applicable Five Year Repurchase Date, (i) a Repurchase Notice in the form set forth on the reverse of the Note duly completed (if the Note is certificated) or stating the following (if the Note is represented by a Global Note): (A) the certificate number of the Note which the Holder will deliver to be repurchased (if the Note is certificated) or that the relevant Repurchase Notice complies with the Applicable Procedures (if the Note is represented by Global Note), (B) the portion of the Principal Amount of the Note which the Holder will deliver to be repurchased, which portion must be in Principal Amounts of \$1,000 or an integral multiple of \$1,000 (*provided* that the remaining Principal Amount of Notes not subject to repurchase must be in an integral multiple of \$1,000) and (C) that such Note shall be repurchased as of the Five Year Repurchase Date pursuant to the terms and conditions specified in the Note and in this Indenture; together with (ii) such Notes duly endorsed for transfer (if the Note is certificated) or book entry transfer of such Note (if the Note is represented by a Global Note). The delivery of such Note to the Paying Agent with, or at any time after delivery of, the Repurchase Notice (together with all necessary endorsements) at the office of the Paying Agent shall be a condition to the receipt by the Holder of the repurchase price therefor.

Holders may withdraw such election if such Holder shall deliver to the Paying Agent, at any time prior to 5:00 p.m., New York City time, on the Business Day immediately prior to the applicable Five Year Repurchase Date, a notice of withdrawal stating the following: (A) the certificate numbers of the Notes to be withdrawn (if the Note is certificated) or that the notice of withdrawal complies with the Applicable Procedures (if the Note is represented by Global Note), (B) the Principal Amount of the withdrawn Notes and (C) the Principal Amount of Notes of such Holder, if any, that remains subject to the Repurchase Notice, which must be in Principal Amounts of \$1,000 or an integral multiple of \$1,000.

(d) The Company, if so requested, shall repurchase from the Holder thereof, pursuant to this Section 11.02, a portion of a Note, if the Principal Amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the repurchase of all of a Note also apply to the repurchase of such portion of such Note.

(e) The Paying Agent shall promptly notify the Company of the receipt by it of any Repurchase Notice or written notice of withdrawal thereof.

(f) The Company may arrange for a third party to purchase any Notes (provided that the Trustee is so notified by the Company promptly) for which the Company receives a valid Repurchase Notice that is not withdrawn, in the manner and otherwise in compliance with the requirements set forth herein. If a third party purchases any Notes under these circumstances, interest will continue to accrue on those Notes and such Notes will continue to be outstanding after the Five Year Repurchase Date. The third party subsequently may resell such purchased Notes to other investors.

(g) Any repurchase by the Company contemplated pursuant to the provisions of this Section 11.02 shall be consummated by the delivery of the consideration to be received by the Holder (i) on the Five Year Repurchase Date if the book-entry transfer or delivery of the Notes to the Paying Agent is effected prior to 5:00 p.m., New York City time on the Business Day prior to the Five Year Repurchase Date, and (ii) if delivered later, within two (2) Business Days following the time of the book-entry transfer or delivery of the Note. Payment of the repurchase price for a Note for which a Repurchase Notice has been delivered and not withdrawn is conditioned upon book-entry transfer or delivery of the Notes, together with necessary endorsements, to the Paying Agent.

(h) In connection with any purchase of Notes pursuant to this Section 11.02, the Company will comply with Rule 13e-4 under the Exchange Act to the extent applicable at that time. If any of the foregoing provisions or other provisions of this Section 11.02 are inconsistent with applicable law, such law shall govern.

### **Section 11.03 Consolidation, Merger, etc.**

In the case of any consolidation, merger or combination of the Company with or into any other Person, any merger of another Person with or into the Company (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Company) or any conveyance, sale, transfer or lease of the consolidated assets of the Company and its Subsidiaries substantially as an entirety to which Section 10.15 applies, in which the Common Stock of the Company is changed or exchanged as a result into the right to receive shares of stock and other property or assets (including cash) that includes shares of Common Stock of the Company or common stock of another Person that are, or upon issuance will be, traded on a United States national securities exchange or approved for trading on an established automated over-the-counter trading market in the United States and such shares constitute at the time such change or exchange becomes effective in excess of 50% of the aggregate fair market value of such shares of stock and other securities, property and assets (including cash) (as determined by the Company, which determination shall be conclusive and binding), then the Person formed by such consolidation or resulting from such merger or combination or which acquires the properties or assets (including cash) of the Company, as the case may be, shall execute and deliver to the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture) modifying the provisions of this Indenture relating to the right of Holders to cause the Company to repurchase the Notes following a Fundamental Change, including the applicable provisions of this Article 11 and the definitions of the Common Stock and Change of Control, as appropriate, and such other related definitions set forth herein as determined in good faith by the Company (which determination shall be conclusive and binding), to make such provisions apply

in the event of a subsequent Fundamental Change to the common stock and the issuer thereof if different from the Company and Common Stock of the Company (in lieu of the Company and the Common Stock of the Company).

## 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 ss. 318(c), the imposed duties shall control.

#### Section 12.02 Notices.

Any notice or communication by the Company or the Trustee to the others is duly given if in writing and delivered in Person or mailed by first class mail (registered or certified, return receipt requested), telex, telecopier or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company:

c/o Charter Communications, Inc.  
12405 Powerscourt Drive  
St. Louis, Missouri 63131  
Telecopier No.: (314) 965-8793  
Attention: Secretary

With a copy to:

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166  
Telecopier No.: (212) 351-4008  
Attention: Joerg H. Esdorn, Esq.

If to the Trustee:

The Bank of New York Trust Company, N.A.  
Corporate Trust Administration  
2 North LaSalle Street, Suite 1020  
Chicago, Illinois 60602  
Fax: 312-827-8542

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

All notices and communications (other than those sent to Holders) 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 the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder shall be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so mailed to any Person described in TIA ss. 313(c), to the extent required by the TIA. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

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 ss. 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 ss. 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 in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 12.05) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 12.05) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

**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 ss. 314(a)(4)) shall comply with the provisions of TIA ss. 314(e) and shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;



(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

**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, Members and Stockholders.**

No director, officer, employee, incorporator, member or stockholder of the Company, as such, shall have any liability for any obligations of the Company under the Notes, this Indenture 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 issuance of the Notes.

**Section 12.08 Governing Law.**

THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE AND THE NOTES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY. EACH OF THE PARTIES HERETO AGREES TO SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE OR THE NOTES.

**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, as the case may be, shall bind its 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 the Notes, as the case may be, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Section 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.

**Section 12.14 Waiver of Jury Trial.**

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

**Section 12.15 Force Majeure.**

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

**ARTICLE 13**

**SATISFACTION AND DISCHARGE**

**Section 13.01 Satisfaction and Discharge of Indenture.**

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

(a) either

(i) all Notes theretofore authenticated and delivered (other than (i) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.08 and (ii) Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust,) have been delivered to the Trustee for cancellation; or

(ii) all such Notes not theretofore delivered to the Trustee for cancellation have become due and payable and the Company has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Notes not theretofore delivered to the Trustee for cancellation, for the Principal Amount (and premium, if any) and interest to the date of such deposit;

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

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with. Notwithstanding the satisfaction and discharge of this Indenture pursuant to this Article 14, the obligations of the Company to the Trustee, and the obligations of the Trustee under Section 13.02 shall survive such satisfaction and discharge.

**Section 13.02 Application of Trust Money.**

All money deposited with the Trustee pursuant to Section 13.01 shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent as the Trustee may determine, to the Persons entitled thereto, of the Principal Amount (and premium, if any) and interest for whose payment such money has been deposited with the Trustee.

**[Signatures on following page]**

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

CHARTER COMMUNICATIONS, INC.

By: /s/ Jeffrey T. Fisher  
Name: Jeffrey T. Fisher  
Title: Executive Vice President and Chief Financial Officer

By: /s/ Thomas M. Degnan  
Name: Thomas M. Degnan  
Title: Vice President – Finance and Corporate Treasurer

THE BANK OF NEW YORK TRUST COMPANY, N.A., as trustee

By: /s/ M. Callahan  
Name: M. Callahan  
Title: Vice President

---

SCHEDULE A

	Effective Date					
	10/1/07	10/1/08	10/1/09	10/1/10	10/1/11	10/1/12
\$2.62	88.0160	88.0160	88.0160	88.0160	88.0160	88.0160
\$3.02	88.0160	88.0160	86.7838	77.6595	64.0463	38.2576
\$3.41	80.1826	76.0165	69.2393	59.5575	44.4188	0.0000
\$3.80	66.9509	63.4889	56.4770	46.6485	31.9498	0.0000
\$4.20	58.0319	53.5431	47.3526	38.0523	23.8523	0.0000
\$4.59	50.4332	46.7952	40.6634	31.6858	18.8061	0.0000
\$5.24	42.3944	38.7271	32.8887	24.9085	13.7305	0.0000
\$5.90	36.2919	32.7420	27.4317	20.5077	10.9140	0.0000
\$6.55	31.3044	28.6346	23.9590	17.6032	9.2710	0.0000
\$7.87	25.7887	22.8842	19.1875	13.9369	7.3053	0.0000
\$9.18	21.5639	19.3635	16.0776	11.6475	6.1318	0.0000
\$10.49	18.6887	16.9284	13.9065	10.0045	5.2516	0.0000
\$11.80	16.6057	14.9040	12.2342	8.7723	4.6062	0.0000
\$13.11	14.9627	13.4078	10.9727	7.8041	4.0487	0.0000
\$19.66	9.7404	8.5669	6.8369	4.7822	2.4644	0.0000
\$26.22	6.8653	5.9264	4.6942	3.2966	1.6723	0.0000
\$32.77	5.0169	4.2834	3.3739	2.3178	1.2029	0.0000
\$39.33	3.7847	3.1979	2.4644	1.7016	0.8802	0.0000

**EXHIBIT A**

{FACE OF NOTE}

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “**CODE**”), THIS SECURITY MAY BE ISSUED WITH ORIGINAL ISSUE DISCOUNT AND THE ISSUE DATE OF THIS SECURITY IS OCTOBER 2, 2007. THE COMPANY AGREES TO PROVIDE PROMPTLY TO THE HOLDER OF THIS SECURITY, UPON WRITTEN REQUEST, THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT AND ISSUE DATE. ANY SUCH WRITTEN REQUEST SHOULD BE SENT TO THE COMPANY AT THE FOLLOWING ADDRESS: CHARTER COMMUNICATIONS, INC, 12405 POWERSCOURT DRIVE, ST. LOUIS, MISSOURI 63131, ATTENTION: SENIOR VICE PRESIDENT, INVESTOR RELATIONS.

{THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH RESTRICTED NOTE:

THIS SECURITY AND THE SHARES OF CLASS A COMMON STOCK OF CHARTER COMMUNICATIONS, INC. (THE “**COMPANY**”) ISSUABLE UPON CONVERSION OF THIS SECURITY 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 SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION.

THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE “**RESALE RESTRICTION TERMINATION DATE**”) WHICH IS TWO YEARS AFTER THE LAST ORIGINAL ISSUE DATE HEREOF, ONLY (A) TO THE COMPANY OR ANY OF ITS SUBSIDIARIES, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT (“**RULE 144A**”), TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, OR (D) PURSUANT TO ANY OTHER 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 CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.}

---

{THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH GLOBAL NOTE:

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

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

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE REGISTERED FORM IN THE LIMITED CIRCUMSTANCES REFERRED TO IN THE INDENTURE, THIS GLOBAL NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.}

---

CHARTER COMMUNICATIONS, INC.

6.50% Convertible Senior Notes due 2027

CUSIP NO. 16117M AF4

No. R-

Principal Amount: \${        } }

CHARTER COMMUNICATIONS, INC., a Delaware corporation (the “**Company**”, which term includes any successor corporation under the Indenture hereinafter referred to) promises to pay to or registered assigns, the Principal Amount (as defined in the Indenture referred to on the reverse side of this Note) on October 1, 2027.

Interest Payment Dates: April 1 and October 1

Regular Record Dates: March 15 and September 15

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

Dated: October 2, 2007

CHARTER COMMUNICATIONS, INC.

By: \_\_\_\_\_  
Name: Thomas M. Degnan  
Title: Vice President – Finance and Corporate Treasurer

By: \_\_\_\_\_  
Name: Jeffrey T. Fisher  
Title: Executive Vice President and Chief Financial Officer

This is one of the 6.50% Convertible Senior Notes due 2027 referred to in the within-mentioned Indenture:

THE BANK OF NEW YORK TRUST COMPANY, N.A., as Trustee

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

---



{BACK OF NOTE}

6.50% Convertible Senior Notes due 2027

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. INTEREST. The Company promises to pay interest on the Principal Amount of this Note at the rate of 6.50% per annum from October 2, 2007 until Maturity. The Company will pay interest semi-annually in arrears on April 1 and October 1 of each year (each an “**Interest Payment Date**”), or if any such day is not a Business Day, on the next succeeding Business Day. Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; provided that if there is no existing Default in the payment of interest, and if this Note is authenticated between a Regular Record Date referred to on the face and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date. The first Interest Payment Date shall be April 1, 2008. 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 a rate that is 1% per annum in excess of the rate then in effect; and it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. METHOD OF PAYMENT. The Company shall pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders of Notes at the close of business on the March 15 or September 15 immediately preceding the Interest Payment Date, even if such Notes are canceled after such Regular Record Date and on or before such Interest Payment Date, except as provided in Section 2.13 of the Indenture with respect to defaulted interest. The Notes will be payable as to Principal Amount, premium, if any, and interest at the office or agency of the Company maintained for such purpose within or without the City and State of New York, or, at the option of the Company, payment of interest may be made by check mailed to the Holders at their addresses set forth in the Note Register, and provided that payment by wire transfer of immediately available funds will be required with respect to principal of and interest and premium on all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Company or the Paying Agent. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

3. PAYING AGENT, REGISTRAR AND CONVERSION AGENT. Initially, The Bank of New York Trust Company, N.A., the Trustee under the Indenture, will act as Paying Agent, Registrar and Conversion Agent. The Company may change any Paying Agent, Registrar or Conversion Agent without 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 October 2, 2007 (the “**Indenture**”) between the Company 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 TIA. 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. The aggregate Principal Amount of Notes that may be outstanding under the Indenture is unlimited; provided that upon initial issuance, the aggregate Principal Amount of Notes outstanding shall not exceed \$479,168,000, except as provided in Section 2.08 of the Indenture.

5. **OPTIONAL REDEMPTION.** Prior to October 1, 2010, the Company may redeem the Notes, in whole or in part, for cash at a price (the “**Redemption Price**”) equal to 100% of the Principal Amount of such Notes plus accrued and unpaid interest, if any, on such Notes to, but excluding, the Redemption Date, but only if the Sale Price of the Common Stock has exceeded, for at least 20 Trading Days in any consecutive 30 Trading Day period ending on the date the Company gives such notice, 180% of the Conversion Price on each such Trading Day. Commencing on, and including, October 1, 2010 until, but excluding, October 1, 2012, the Company may redeem the Notes, in whole or in part, for cash at the Redemption Price, but only if the Sale Price of the Common Stock has exceeded, for at least 20 Trading Days in any consecutive 30 Trading Day period ending on the date the Company gives such notice, 150% of the Conversion Price on each such Trading Day. On and after October 1, 2012, the Company may redeem the Notes, in whole or in part, for cash at the Redemption Price.

6. **NOTICE OF REDEMPTION.** Notice of redemption will be mailed by first class mail 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. Notices of redemption may not be conditional. No Notes of \$1,000 Principal Amount or less may be redeemed in part. Notes in denominations larger than \$1,000 Principal Amount may be redeemed in part but only in whole multiples of \$1,000 Principal Amount, unless all of the Notes held by a Holder are to be redeemed. On and after the Redemption Date, interest ceases to accrue on Notes or portions thereof called for redemption.

7. **MANDATORY REDEMPTION.** Except as otherwise provided in Article 11 of the Indenture, the Company shall not be required to make mandatory redemption payments with respect to the Notes.

8. **REPURCHASE AT OPTION OF HOLDER.** If a Fundamental Change occurs, the Company shall, in accordance with the terms of the Indenture, make an offer to repurchase for cash all or any part (equal to \$1,000 or an integral multiple thereof) of each Holder’s Notes at a purchase price equal to 100% of the Principal Amount of the Notes to be purchased, plus any accrued and unpaid interest to but excluding the Fundamental Change Repurchase Date, unless such Fundamental Change Repurchase Date falls after a Regular Record Date and on or prior to the corresponding Interest Payment Date, in which case the Company will pay the full amount of accrued and unpaid interest payable on such Interest Payment Date to the holder of record at the close of business on the corresponding Regular Record Date. Within 20 days following any Fundamental Change, the Company shall mail a notice to each Holder describing the transaction

---

or transactions that constitute the Fundamental Change and offering to repurchase Notes on the Fundamental Change Repurchase Date specified in such notice, pursuant to the procedures required by the Indenture and described in such notice.

In addition, each Holder shall have the right, at such Holder's option, to require the Company to repurchase such Holder's Notes, or any portion thereof that is an integral multiple of \$1,000 Principal Amount, in cash, on October 1, 2012, October 1, 2017 and October 1, 2022, at a repurchase price of 100% of the Principal Amount of the Notes being repurchased, plus accrued and unpaid interest to, but excluding, the Five Year Repurchase Date unless such Five Year Repurchase Date falls after a Regular Record Date and on or prior to the corresponding Interest Payment Date, in which case the Company will pay the full amount of accrued and unpaid interest payable on such Interest Payment Date to the holder of record at the close of business on the corresponding Regular Record Date. Not less than 20 Business Days prior to each Five Year Repurchase Date, the Company shall mail a written notice of repurchase in the form set forth on the reverse of this Note.

9. DENOMINATIONS, TRANSFER, EXCHANGE. The Notes are in registered form without coupons in denominations of \$1,000 Principal Amount and integral multiples of \$1,000 Principal Amount. 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.

10. PERSONS DEEMED OWNERS. The registered Holder of a Note may be treated as its owner for all purposes.

11. AMENDMENT AND SUPPLEMENT. The Indenture or the Notes may be amended or supplemented only as set forth in Article 9 of the Indenture.

12. DEFAULTS AND REMEDIES. The Notes shall have the Events of Default set forth in Section 6.01 of the Indenture. In the case of an Event of Default set forth in Section 6.01(f) or (g), the Principal Amount of all outstanding Notes will become due and payable without further action or notice. If any other Event of Default occurs and is continuing, the Trustee by notice to the Company or the Holders of at least 25% in Principal Amount of the then outstanding Notes by notice to the Company and the Trustee may declare the Principal Amount of all the Notes to be due and payable immediately. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. Holders shall have such other rights as set forth in Article 6 of the Indenture.

13. CONVERSION. Subject to and upon compliance with the provisions of the Indenture, the Holder of this Note is entitled, at its option, to convert this Note (or any portion of the Principal Amount hereof that is an integral multiple of U.S.\$1,000, provided that the unconverted portion of such Principal Amount is U.S.\$1,000 or any integral multiple of U.S.\$1,000 in excess thereof) into fully paid and nonassessable shares of Common Stock of the Company at an initial Conversion Rate of 293.3868 shares of Common Stock for each U.S.\$1,000 Principal Amount of Notes (or at the current adjusted Conversion Rate if an

---

adjustment has been made as provided in the Indenture), plus the Redemption Make Whole Amount if required pursuant to the terms of the Indenture.

The Conversion Rate is subject to adjustment as provided in the Indenture.

14. TRUSTEE DEALINGS WITH COMPANY. 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.

15. NO RECOURSE AGAINST OTHERS. A director, officer, employee, incorporator or stockholder of the Company, as such, shall not have any liability for any obligations of the Company under the Notes or the Indenture 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 the issuance of the Notes.

16. GOVERNING LAW. THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS NOTE AND THE INDENTURE WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

17. AUTHENTICATION. This Note shall not be valid until authenticated by the manual signature (which may be by facsimile) of the Trustee or an authenticating agent.

18. ABBREVIATIONS. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TENANT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

19. CUSIP NUMBERS. No representation is made as to the accuracy of any CUSIP 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.

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

Charter Communications, Inc.  
12405 Powerscourt Drive  
St. Louis, Missouri 63131  
Attention: Secretary  
Telecopier No.: (314) 965-0555

---

Schedule I

[Include Schedule I only for a Global Note]

CHARTER COMMUNICATIONS, INC.  
6.50% Convertible Senior Note Due 2027

No.

The initial Principal Amount of this Global Note is \$\_\_\_\_\_.

<u>Date</u>	<u>Principal Amount</u>	<u>Notation Explaining Principal Amount Recorded</u>	<u>Authorized Signature of Trustee or Custodian</u>
-------------	-------------------------	--	---

---

**ASSIGNMENT FORM**

To assign this Note, fill in the form below:

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

(Insert assignee's legal name)

---

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

---

---

---

---

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

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

Date:

Your Signature: \_\_\_\_\_

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

Signature Guarantee\*: \_\_\_\_\_;

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

---

**CONVERSION NOTICE**

The undersigned Holder of this Note hereby irrevocably exercises the option to convert this Note, or any portion of the Principal Amount hereof (which is U.S.\$1,000 or an integral multiple of U.S.\$1,000 in excess thereof, provided that the unconverted portion of such Principal Amount is U.S.\$1,000 or any integral multiple of U.S.\$1,000 in excess thereof) below designated, into shares of Common Stock in accordance with the terms of the Indenture referred to in this Note, and directs that such shares, together with a check in payment for any fractional share, any other amounts payable to the Holder in connection with such conversion and any Notes representing any unconverted Principal Amount hereof, be delivered to and be registered in the name of the undersigned unless a different name has been indicated below. If shares of Common Stock or Notes are to be registered in the name of a Person other than the undersigned, (a) the undersigned will pay all transfer taxes payable with respect thereto and (b) signature(s) must be guaranteed by an Eligible Guarantor Institution with membership in an approved signature guarantee program pursuant to Rule 17Ad-15 under the Notes Exchange Act of 1934. Any amount required to be paid by the undersigned on account of interest accompanies this Note.

Dated: \_\_\_\_\_ & \_\_\_\_\_  
#160; \_\_\_\_\_  
60; \_\_\_\_\_  
Signature(s) \_\_\_\_\_

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

Name  
\_\_\_\_\_

(Address)  
\_\_\_\_\_

Social Security or other Identification Number, if any  
\_\_\_\_\_

(Signature Guaranteed)  
\_\_\_\_\_

If only a portion of the Notes is to be converted, please indicate:  
  
\_\_\_\_\_

1. Principal Amount to be converted: U.S. \$ \_\_\_\_\_

2. Principal Amount and denomination of Notes representing unconverted principal amount to be issued:

Amount: U.S. \_\_\_\_\_ \$ Denominations: U.S. \$ \_\_\_\_\_

(U.S.\$1,000 or any integral multiple of U.S.\$1,000 in excess thereof, provided that the unconverted portion of such Principal Amount is U.S. \$1,000 or any integral multiple of U.S. \$1,000 in excess thereof)

---



**REPURCHASE NOTICE**

The undersigned registered owner of this Note hereby irrevocably acknowledges receipt of a notice from Charter Communications, Inc. (the “Company”) regarding the right of Holders to elect to require the Company to repurchase the Notes and requests and instructs the Company to repay the entire principal amount of this Note, or the portion thereof (which is \$1,000 or an integral multiple thereof) below designated, in cash, in accordance with the terms of the Indenture at the price of 100% of such entire principal amount or portion thereof, together with accrued and unpaid interest to, but excluding, the Five Year Repurchase Date, to the registered holder hereof. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. The Notes shall be repurchased by the Company as of the Five Year Repurchase Date, pursuant to the terms and conditions specified in the Indenture.

Dated: \_\_\_\_\_

\_\_\_\_\_

Signature(s)

Social Security or other Identification Number, if any

\_\_\_\_\_

(Signature Guaranteed)

If only a portion of the Notes are to be repurchased, please indicate:

1. Principal Amount to be repurchased: U.S. \$ \_\_\_\_\_

2. Principal Amount and denomination of Notes representing unrepurchased Principal Amount to be issued:

Amount: U.S. \$ \_\_\_\_\_

Denominations: U.S. \$ \_\_\_\_\_

(U.S.\$1,000 or any integral multiple of U.S.\$1,000 in excess thereof, provided that the unrepurchased portion of such Principal Amount is U.S. \$1,000 or any integral multiple of U.S. \$1,000 in excess thereof)

\_\_\_\_\_

ANNEX A — FORM OF RESTRICTED NOTES CERTIFICATE

RESTRICTED NOTES CERTIFICATE

(For transfers pursuant to Section 2.07(b)(ii) and 2.07(b)(iii) of the Indenture)

The Bank of New York Trust Company, N.A.  
2 North LaSalle Street, Suite 1020  
Chicago, Illinois 60602  
Attention: Corporate Trust Services  
Fax: [       ]

Re: 6.50% CONVERTIBLE SENIOR NOTES DUE 2027 OF CHARTER COMMUNICATIONS, INC. (THE “NOTES”)

Reference is made to the Indenture, dated as of October 2, 2007 (the “**Indenture**”), from Charter Communications, Inc. (the “**Company**”) to The Bank of New York Trust Company, N.A., as Trustee. Terms used herein and defined in the Indenture or Rule 144 under the U.S. Securities Act of 1933 (the “**Securities Act**”) are used herein as so defined.

This certificate relates to U.S. \$       Principal Amount of Notes, which are evidenced by the following certificate(s) (the “**Specified Notes**”):

CUSIP No. 16117M AF4

CERTIFICATE No(s). \_\_\_\_\_

The person in whose name this certificate is executed below (the “**Undersigned**”) hereby certifies that either (i) it is the sole beneficial owner of the Specified Notes or (ii) it is acting on behalf of all the beneficial owners of the Specified Notes and is duly authorized by them to do so. Such beneficial owner or owners are referred to herein collectively as the “**Owner**”. If the Specified Notes are represented by a Global Note, they are held through the Depository or an Agent Member in the name of the Undersigned, as or on behalf of the Owner. If the Specified Notes are not represented by a Global Note, they are registered in the name of the Undersigned, as or on behalf of the Owner.

The Owner has requested that the Specified Notes be transferred to a person (the “**Transferee**”) who will take delivery in the form of a Restricted Note. In connection with such transfer, the Owner hereby certifies that such transfer is being effected pursuant to an effective registration statement under the Securities Act or it is being effected in accordance with Rule 144A, or pursuant to another exemption from registration under the Securities Act (if available) or Rule 144 under the Securities Act and all applicable laws of the states of the United States and other jurisdictions. Accordingly, the Owner hereby further certifies as follows:

(1)       *Rule 144A Transfers.* If the transfer is being effected in accordance with Rule 144A:

---

(A) the Specified Notes are being transferred to a person that the Owner and any person acting on its behalf reasonably believe is a “qualified institutional buyer” within the meaning of Rule 144A, acquiring for its own account or for the account of a qualified institutional buyer; and

(B) the Owner and any person acting on its behalf have taken reasonable steps to ensure that the Transferee is aware that the Owner may be relying on Rule 144A in connection with the transfer; and

(2) *Rule 144 Transfers.* If the transfer is being effected pursuant to Rule 144:

(A) the transfer is occurring after a holding period of at least one year (computed in accordance with paragraph (d) of Rule 144) has elapsed since the date the Specified Notes were acquired from the Company or from an affiliate (as such term is defined in Rule 144) of the Company, whichever is later, and is being effected in accordance with the applicable amount, manner of sale and notice requirements of paragraphs (e), (f) and (h) of Rule 144; or

(B) the transfer is occurring after a period of at least two years has elapsed since the date the Specified Notes were acquired from the Company or from an affiliate (as such term is defined in Rule 144) of the Company, whichever is later, and the Owner is not, and during the preceding three months has not been, an affiliate of the Company.

(3) *Transfers Pursuant to Other Securities Act Exemptions.* If the transfer is being effected pursuant to a Securities Act exemption other than ones set forth in (1) or (2) above, there shall be delivered to the Company an opinion of counsel with respect to such Owners.

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

Dated: \_\_\_\_\_

Print the name of the Undersigned, as such term is defined in the second paragraph of this certificate.)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(If the Undersigned is a corporation, partnership or fiduciary, the title of the person signing on behalf of the Undersigned must be stated.)

---

ANNEX B — FORM OF UNRESTRICTED NOTES CERTIFICATE

UNRESTRICTED NOTES CERTIFICATE

(For removal of Restricted Notes Legend pursuant to Section 2.07(c))

The Bank of New York Trust Company, N.A.  
2 North LaSalle Street, Suite 1020  
Chicago, Illinois 60602  
Attention: Corporate Trust Services  
Fax: [       ]

RE: 6.50% CONVERTIBLE SENIOR NOTES DUE 2027 OF CHARTER COMMUNICATIONS, INC. (THE “NOTES”)

Reference is made to the Indenture, dated as of October 2, 2007 (the “**Indenture**”), from Charter Communications, Inc. (the “**Company**”) to The Bank of New York Trust Company, N.A., as Trustee. Terms used herein and defined in the Indenture or in Rule 144 under the U.S. Securities Act of 1933 (the “**Securities Act**”) are used herein as so defined.

This certificate relates to U.S.\$       Principal Amount of Notes, which are evidenced by the following certificate(s) (the “**Specified Notes**”):

CUSIP No. 16117M AF4

CERTIFICATE No(s). \_\_\_\_\_

The person in whose name this certificate is executed below (the “**Undersigned**”) hereby certifies that either (i) it is the sole beneficial owner of the Specified Notes or (ii) it is acting on behalf of all the beneficial owners of the Specified Notes and is duly authorized by them to do so. Such beneficial owner or owners are referred to herein collectively as the “**Owner**”. If the Specified Notes are represented by a Global Note, they are held through the Depository or an Agent Member in the name of the Undersigned, as or on behalf of the Owner. If the Specified Notes are not represented by a Global Note, they are registered in the name of the Undersigned, as or on behalf of the Owner.

The Owner has requested that the Specified Notes be exchanged for Notes bearing no Restricted Notes Legend pursuant to Section 2.07(c) of the Indenture. In connection with such exchange, the Owner hereby certifies that the exchange is occurring (i) pursuant to an effective registration statement under the Securities Act, or (ii) after a period of at least two years has elapsed since the date the Specified Notes were acquired from the Company or from an “affiliate” (as such term is defined in Rule 144) of the Company, whichever is later, and the Owner is not, and during the preceding three months has not been, an affiliate of the Company. The Owner also acknowledges that any future transfers of the Specified Notes must comply with all applicable Notes laws of the states of the United States and other jurisdictions.

---

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

Dated: \_\_\_\_\_

Print the name of the Undersigned, as such term is defined in the second paragraph of this certificate.)

Dated: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(If the Undersigned is a corporation, partnership or fiduciary, the title of the person signing on behalf of the Undersigned must be stated.)

---

**ANNEX C — FORM OF SURRENDER CERTIFICATE**

In connection with the certification contemplated by Section 10.02 relating to compliance with certain restrictions relating to transfers of Restricted Notes, such certification shall be provided substantially in the form of the following certificate, with only such changes thereto as shall be approved by the Company:

**CERTIFICATE**

**CHARTER COMMUNICATIONS, INC.**

**6.50% CONVERTIBLE SENIOR NOTES DUE 2027**

This is to certify that as of the date hereof with respect to U.S.\$ Principal Amount of the above-captioned Notes surrendered on the date hereof (the “**Surrendered Notes**”) for registration of transfer, or for conversion or repurchase where the Notes issuable upon such conversion or repurchase are to be registered in a name other than that of the undersigned Holder (each such transaction being a “**transfer**”), the undersigned Holder (as defined in the Indenture) certifies that the transfer of Surrendered Notes associated with such transfer complies with the restrictive legend set forth on the face of the Surrendered Notes for the reason checked below:

\_\_\_\_\_ The transfer of the Surrendered Notes is being made pursuant to an effective registration statement under the Securities Act; or

\_\_\_\_\_ The transfer of the Surrendered Notes complies with Rule 144A under the Securities Act; or

\_\_\_\_\_ The transfer of the Surrendered Notes complies with Rule 144 under the United States Securities Act of 1933, as amended (the “Securities Act”);  
or

\_\_\_\_\_ The transfer of the Surrendered Notes has been made pursuant to an exemption from registration under the Securities Act and an opinion of counsel has been delivered to the Company with respect to such transfer.

{Name of Holder}

Dated:

\* To be dated the date of surrender

\_\_\_\_\_

## AMENDED AND RESTATED SHARE LENDING AGREEMENT

Dated as of October 2, 2007

Between

CHARTER COMMUNICATIONS, INC. (“**Lender**”),

and

CITIGROUP GLOBAL MARKETS LIMITED (“**Borrower**”), through CITIGROUP GLOBAL MARKETS INC., as agent for Borrower (“**Agent**”),

and

CITIGROUP GLOBAL MARKETS HOLDINGS INC., as guarantor of Borrower’s obligations hereunder (the “**Guarantor**”),

and

CITIGROUP GLOBAL MARKETS INC., in its capacity as Collateral Agent (as hereinafter defined).

WHEREAS, in connection with the issuance by Lender of \$862,500,000 aggregate principal amount of 2009 Convertible Senior Notes (as defined herein), Lender, Borrower and Guarantor entered into that certain Share Lending Agreement dated as of November 22, 2004 (the “**Share Lending Agreement**”);

WHEREAS, Lender, Borrower and Guarantor desire to amend and restate the Share Lending Agreement in connection with an exchange offer (the “**Exchange Offer**”) pursuant to which \$363,847,000 aggregate principal amount of 2009 Convertible Notes are being exchanged for 2027 Convertible Notes (as defined herein) in order to maintain and extend the Loans (as defined herein) to Borrower under the Share Lending Agreement;

WHEREAS, Agent is entering into this Agreement solely in its capacity as Agent for Borrower;

AND WHEREAS, this AGREEMENT sets forth the terms and conditions under which Lender and Borrower agree to maintain and extend the Loans made to Borrower under the Share Lending Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby mutually covenant and agree as follows:

---

Section 1. *Certain Definitions.* The following capitalized terms shall have the following meanings:

“**2009 Convertible Notes**” means the \$862,500,000 aggregate principal amount of Convertible Senior Notes due 2009 issued by Lender.

“**2027 Convertible Notes**” means the \$479,168,000 aggregate principal amount of Convertible Senior Notes due 2027 issued by Lender.

“**Business Day**” means a day on which regular trading occurs in the principal trading market for the Common Stock.

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

“**Clearing Organization**” means The Depository Trust Company, or, if agreed to by Borrower and Lender, such other securities intermediary at which Borrower (or Agent) and Lender maintain accounts.

“**Closing Price**” on any day means, with respect to the Common Stock (i) if the Common Stock is listed on a U.S. securities exchange registered under the Exchange Act, is traded on The Nasdaq National Market or is included in the OTC Bulletin Board Service (operated by the National Association of Securities Dealers, Inc.), the last reported sale price, regular way, in the principal trading session on such day on such market on which the Common Stock is then listed or is admitted to trading (or, if the day of determination is not a Business Day, the last preceding Business Day) and (ii) if the Common Stock is not so listed or admitted to trading or if the last reported sale price is not obtainable (even if the Common Stock is listed or admitted to trading on such market), the average of the bid prices for the Common Stock obtained from as many dealers in the Common Stock (which may include Borrower or its affiliates), but not exceeding three, as shall furnish bid prices available to the Lender.

“**Collateral**” means any Cash or Non-Cash Collateral. Each of the parties to this Agreement hereby agree that Cash and each item within the definition of Non-Cash Collateral shall be treated as a “financial asset” as defined by Section 8-102(a)(9) of the UCC.

“**Collateral Account**” means a securities account of the Collateral Agent maintained on the books of Citigroup Global Markets Inc., as Securities Intermediary, and designated “Citigroup Global Markets Inc., as Collateral Agent of Charter Communications, Inc., as pledgee of Citigroup Global Markets Limited, as Borrower of Loaned Shares”. Any Collateral deposited in the Collateral Account shall be segregated from all other assets and property of the Collateral Agent, which such segregation may be accomplished by appropriate identification on the books and records of Collateral Agent, as a “securities intermediary” within the meaning of the UCC. The Securities Intermediary

---



acknowledges that the Collateral Account is maintained for the Collateral Agent and undertakes to treat the Collateral Agent as entitled to exercise the rights that comprise the Collateral credited to the Collateral Account. The Collateral Agent shall establish the Collateral Account upon receiving notice from Borrower of the occurrence of a Collateral Trigger Event.

“**Collateral Agent**” means Citigroup Global Markets Inc., in its capacity as collateral agent for Lender hereunder, or any successor thereto under Section 20.

“**Collateral Percentage**” means 100%.

“**Collateral Trigger Event**” means that the senior unsecured debt rating assigned to Guarantor (i) by both S&P and Moody’s is at or below A- and A3, respectively or (ii) by either S&P or Moody’s is at or below BBB+ or Baa1, respectively, or neither S&P nor Moody’s assigns such a rating to Guarantor.

“**Convertible Notes**” means collectively the 2009 Convertible Notes and the 2027 Convertible Notes.

“**Common Stock**” means shares of Class A Common Stock, par value \$.001, of Lender, or any other security, assets or other consideration (including cash) into which the Common Stock shall be exchanged or converted as the result of any merger, consolidation, other business combination, reorganization, reclassification, recapitalization or other corporate action (including, without limitation, a reorganization in bankruptcy).

“**Cutoff Time**” shall mean 10:00 a.m. in the jurisdiction of the Clearing Organization, or such other time on a Business Day by which a transfer of Loaned Shares must be made by Borrower to Lender, as shall be determined in accordance with market practice.

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

“**Facility Termination Date**” means the earlier to occur of (i) the first date as of which all of the Convertible Notes have been converted, repaid, repurchased, redeemed or are otherwise no longer outstanding and (ii) October 1, 2027.

“**FHLMC Certificates**” means single-class mortgage participation certificates in book-entry form backed by single-family residential mortgage loans, the full and timely payment of interest at the applicable certificate rate and the ultimate collection of principal of which are guaranteed by the Federal Home Loan Mortgage Corporation (excluding Real Estate Mortgage Investment Conduit (“**REMIC**”) or other multi-class pass-through certificates, pass-through certificates backed by adjustable rate mortgages and securities paying interest or principal only).

---

**“FNMA Certificates”** means single-class mortgage pass-through certificates in book-entry form backed by single-family residential mortgage loans, the full and timely payment of interest at the applicable certificate rate and the ultimate collection of principal of which are guaranteed by the Federal National Mortgage Association (excluding REMIC or other multi-class pass-through certificates, pass-through certificates backed by adjustable rate mortgages and securities paying interest or principal only).

**“GNMA Certificates”** means single-class fully modified pass-through certificates in book-entry form backed by single-family residential mortgage loans, the full and timely payment of principal and interest of which is guaranteed by the Government National Mortgage Association (excluding REMIC or other multi-class pass-through certificates, pass-through certificates backed by adjustable rate mortgages and securities paying interest or principal only).

**“Loan Availability Period”** means the period that began on November 22, 2004 and ended on November 16, 2006.

**“Loaned Shares”** means shares of Common Stock transferred in a Loan hereunder until such Common Stock (or identical Common Stock) is transferred back to Lender hereunder. If, as the result of a stock dividend, stock split or reverse stock split, the number of outstanding shares of Common Stock is increased or decreased, then the number of outstanding Loaned Shares shall be proportionately increased or decreased, as the case may be. If any new or different security (or two or more securities) shall be exchanged for the outstanding shares of Common Stock as the result of any reorganization, merger, consolidation, other business combination, reclassification, recapitalization or other corporate action (including, without limitation, a reorganization in bankruptcy), such new or different security (or such two or more securities collectively) shall, effective upon such exchange, be deemed to become a Loaned Share in substitution for the former Loaned Share for which such exchange is made and in the same proportion for which such exchange was made. For purposes of return of Loaned Shares by the Borrower or purchase or sale of securities pursuant to Section 6 or 12, such term shall include securities of the same issuer, class and quantity as the Loaned Shares as adjusted pursuant to the two preceding sentences.

**“Market Value”** on any day means (i) with respect to Common Stock, the most recent Closing Price of the Common Stock prior to such day and (ii) with respect to any Collateral that is (a) Cash, the face amount thereof, (b) a letter of credit, the undrawn amount thereof and (c) any other security or property, the market value thereof, as determined by the Collateral Agent, in accordance with market practice for such securities or property, based on the price for such security or property as of the most recent close of trading obtained from a generally recognized source or the closing bid quotation at the most recent close of trading obtained from such source, plus accrued interest to the extent not included therein, unless market practice with respect to the valuation of such

---

securities or property in connection is to the contrary; *provided* that with respect to Collateral consisting of (i) Treasuries and Mortgage-Backed Securities with a maturity of at least one year but less than five years, such Market Value shall be multiplied by 98%, (ii) Treasuries and Mortgage-Backed Securities with a maturity of at least five years but less than ten years, such Market Value shall be multiplied by 97%, and (iii) Treasuries and Mortgage-Backed Securities with a maturity of at least five years, such Market Value shall be multiplied by 95%.

**“Maximum Number of Shares”** means 29,845,200 shares of Common Stock, subject to the following adjustments:

(a) If, as the result of a stock dividend, stock split or reverse stock split, the number of outstanding shares of Common Stock is increased or decreased, the Maximum Number of Shares shall, effective as of the payment or delivery date of any such event, be proportionally increased or decreased, as the case may be.

(b) If, pursuant to a merger, consolidation, other business combination, reorganization, reclassification, recapitalization or other corporate action (including, without limitation, a reorganization in bankruptcy), the Common Stock is exchanged for or converted into cash, securities or other property, the Maximum Number of Shares shall, effective upon such exchange, be adjusted by multiplying the Maximum Number of Shares at such time by the number of securities, the amount of cash or the fair market value of any other property exchanged for one share of Common Stock in such event.

(c) Upon the termination of any Loan pursuant to [Section 6\(a\)](#), the Maximum Number of Shares shall be reduced by the number of Loaned Shares surrendered by Borrower to Lender; *provided* that if the number of Loaned Shares offered and sold by Borrower in any registered public offering under the Securities Act is less than the number of shares of Common Stock constituting the Loan made in connection with such registered public offering (such difference, the **“Unsold Amount”**), any termination of a Loan of the Unsold Amount prior to the date 30 calendar days following the date of the Borrowing Notice with respect to such Loan shall not so reduce the Maximum Number of Shares.

**“Moody’s”** means Moody’s Investors Service and its successors.

**“Mortgage-Backed Securities”** means FHLMC Certificates, FNMA Certificates or GNMA Certificates, but excluding zero-coupon securities.

**“Non-Cash Collateral”** means (i) any evidence of indebtedness issued, or directly and fully guaranteed or insured, by the United States of America or any agency or instrumentality thereof, including Treasuries and Mortgage-Backed Securities; (ii) any deposits, certificates of deposit or acceptances of any institution which is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than \$500 million at the time of deposit (and which may include the Collateral Agent or any affiliate of the

---

Collateral Agent so long as the Collateral Agent is other than Borrower or an affiliate of Borrower); (iii) any marketable obligations of any Person that is fully and unconditionally guaranteed by a bank referred to in clause (ii); (iv) any repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America or issued by any agency thereof and backed as to timely payment by the full faith and credit of the United States of America; (v) commercial paper of any corporation incorporated under the laws of the United States or any State thereof that is rated "investment grade" A-1 by S&P or P-1 by Moody's; (vi) any money market funds (including, but not limited to, money market funds managed by the Collateral Agent or an affiliate of the Collateral Agent) registered under the Investment Company Act of 1940, as amended; (vii) any letter of credit issued by a bank referred to in clause (ii); and (viii) all proceeds of the foregoing; *provided* that in no event shall Non-Cash Collateral include "margin stock" as defined by Regulation U of the Board of Governors of the Federal Reserve System.

"**S&P**" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. and its successors

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Securities Intermediary**" means a "securities intermediary" as defined by Section 8-102(a)(14) of the UCC.

"**Treasuries**" means negotiable debt obligations issued by the U.S. Treasury Department.

"**UCC**" means the Uniform Commercial Code as in effect in the State of New York on the date hereof and as it may be amended from time to time.

## Section 2. *Loans of Shares; Transfers of Loaned Shares*

(a) During the Loan Availability Period, Lender loaned to Borrower 116,949,300 shares of Common Stock, of which 29,845,200 shares of Common Stock remain outstanding as of the date hereof. Such loans were made subject to the terms of the Share Lending Agreement (each such issuance and loan, a "**Loan**") and were confirmed by a schedule and receipt listing the Loaned Shares provided by Borrower to Lender (the "**Confirmation**"). Such Confirmation constitutes conclusive evidence with respect to the Loan, including the number of shares of Common Stock that are the subject of the Loan to which the Confirmation relates, until such Loan is terminated and the Loaned Shares are returned to Lender in accordance with this Agreement.

---

Section 3. Collateral.

(a) Prior to the occurrence of a Collateral Trigger Event, Borrower will not be required and is under no obligation to provide any Collateral to Lender for any Loan hereunder.

(b) Upon the occurrence of a Collateral Trigger Event, Borrower shall notify Lender and Collateral Agent in writing and upon receipt of such notice, the Collateral Agent shall establish the Collateral Account and, unless otherwise agreed by Borrower and Lender, Borrower shall, within five business days, transfer to Collateral Agent, for deposit to the Collateral Account, Collateral with a Market Value at least equal to the Collateral Percentage of the Market Value of all outstanding Loaned Shares.

(c) Following the occurrence and during the continuance of a Collateral Trigger Event, unless otherwise agreed by Borrower and Lender, Borrower shall, prior to or concurrently with the transfer of the Loaned Shares to Borrower, but in no case later than the close of business on the day of such transfer, transfer to Collateral Agent, for deposit to the Collateral Account, Collateral with a Market Value at least equal to the Collateral Percentage of the Market Value of the Loaned Shares as of the date of such transfer.

(d) Any Collateral transferred by Borrower to Collateral Agent shall be security for Borrower's obligations in respect of the Loaned Shares and for any other obligations of Borrower to Lender hereunder. Borrower hereby pledges with, assigns to, and grants Collateral Agent for the benefit of Lender a continuing first priority security interest in, and a lien upon, all of Borrower's right, title and interest in and to the Collateral, whether now existing or hereafter acquired or arising, together with all proceeds thereof, which security interest shall not attach, in the case of Section 3(c) above, until the transfer of the Loaned Shares by Lender to Borrower. To provide for the effectiveness, validity, enforceability, perfection and priority of Lender's rights as a secured party, Borrower acknowledges that Collateral Agent has obtained control of the Collateral within the meaning of Sections 8-106 and 9-106 of the UCC, and Collateral Agent acknowledges that it has control of the Collateral on behalf of Lender within the meaning of Section 8-106(d)(3) of the UCC. Notwithstanding anything to the contrary herein or in the UCC, Lender may not use or invest the Collateral and Collateral Agent shall take no instruction from Lender regarding the use or investment of Collateral.

(e) Following written notice by Borrower to Lender that any Collateral Trigger Event no longer exists, Collateral Agent shall release to Borrower Collateral with a Market Value equal to the Collateral Percentage of the Market Value of all outstanding Loaned Shares. Such transfer of Collateral shall be made no later than the Cutoff Time on the Business Day immediately following the day that Borrower provides such written notice.

---

(f) Following the transfer to Lender of Loaned Shares pursuant to [Section 6](#), Collateral Agent shall release to Borrower Collateral with a Market Value equal to the Collateral Percentage of the Market Value of the Loaned Shares so transferred but only to the extent that immediately following such transfer of Collateral, no Collateral Deficit would exist. Such transfer of Collateral shall be made no later than the Cutoff Time on the day the Loaned Shares are transferred, or if such day is not a day on which a transfer of such Collateral may be effected under [Section 13](#), or if the transfer of Loaned Shares by Lender to Borrower occurs after the Cutoff Time on such day, then in each case the next day on which such a transfer may be effected.

(g) If Borrower transfers Collateral to Collateral Agent pursuant to Section 3(c) above, and Lender does not transfer the Loaned Shares to Borrower, Borrower shall have the absolute right to the return of the Collateral; and if Lender transfers Loaned Shares to Borrower and Borrower does not transfer Collateral to Collateral Agent when required pursuant to Section 3(c) above, Lender shall have the absolute right to the return of the Loaned Shares.

(h) Borrower may, upon notice to Lender and Collateral Agent, substitute Collateral for Collateral securing any Loan or Loans; *provided* that such substituted Collateral shall have a Market Value such that the aggregate Market Value of such substituted Collateral, together with all other Collateral, shall equal or exceed the Collateral Percentage of the Market Value of the Loaned Shares as of the date of such substitution.

#### Section 4. *Mark To Market.*

(a) If at the close of trading on any Business Day prior to the Facility Termination Date following the occurrence and during the continuance of a Collateral Trigger Event the aggregate Market Value of all Collateral shall be less than the Collateral Percentage of the Market Value of all the outstanding Loaned Shares (a “**Collateral Deficit**”), Lender may, by notice to Borrower and Collateral Agent, demand that Borrower transfer to Collateral Agent, for deposit to the Collateral Account, no later than the following Business Day, additional Collateral so that the Market Value of such additional Collateral, when added to the Market Value of all other Collateral, shall equal or exceed the Collateral Percentage of the Market Value of the Loaned Shares on such Business Day of determination.

(b) If at the close of trading on any Business Day prior to the Facility Termination Date the aggregate Market Value of all Collateral shall be greater than the Collateral Percentage of the Market Value of all the outstanding Loaned Shares (a “**Collateral Excess**”), Borrower may, by notice to Lender and Collateral Agent, demand that Collateral Agent transfer to Borrower such amount of the Collateral selected by Borrower so that the Market Value of the Collateral, after deduction of such amounts, shall thereupon be at least equal to the Collateral

---

Percentage of the Market Value of the Loaned Shares on such Business Day of determination.

(c) Notwithstanding the foregoing, with respect to any outstanding Loans secured by Collateral, the respective rights of Lender and Borrower under Section 4(a) and Section 4(b) may be exercised only where a Collateral Excess or Collateral Deficit exceeds 2% of the Market Value of the Loaned Shares.

Section 5. *Loan Fee.* Borrower paid Lender a single loan fee per Loan (a “**Loan Fee**”) equal to \$.001 per Loaned Share included in such Loan.

Section 6. *Loan Terminations.*

(a) Borrower may terminate all or any portion of a Loan on any Business Day by giving written notice thereof to Lender and transferring the corresponding number of Loaned Shares to Lender, without any consideration being payable in respect thereof by Lender to Borrower. Any such loan termination shall be effective upon delivery of the Loaned Shares in accordance with the terms hereof.

(b) All outstanding Loans, if any, shall terminate on the Facility Termination Date and all Loaned Shares then outstanding, if any, shall be delivered by Borrower to Lender, without any consideration being payable in respect thereof by Lender to Borrower, no later than the fifth Business Day following the Facility Termination Date.

(c) If on any date, the number of Loaned Shares exceeds the Maximum Number of Shares, the number of Loaned Shares in excess of the Maximum Number of Shares shall be delivered by Borrower to Lender, without any consideration being payable in respect thereof by Lender to Borrower, no later than the third Business Day following such date.

(d) If a Loan is terminated upon the occurrence of a Default as set forth in [Section 11](#), the Loaned Shares shall be delivered by Borrower to Lender, without any consideration being payable in respect thereof by Lender to Borrower, no later than the third Business Day following the termination date of such Loan as provided in [Section 11](#).

Section 7. *Distributions.*

(a) If at any time when there are Loaned Shares outstanding under this Agreement, Lender pays a cash dividend or makes a cash distribution in respect of its outstanding Common Stock, Borrower shall pay to Lender (whether or not Borrower is a holder of any or all of the outstanding Loaned Shares), within one Business Day after the payment of such dividend or distribution, an amount in cash equal to the product of (i) the amount per share of such dividend or distribution and (ii) the number of Loaned Shares outstanding at such time.

---

(b) If at any time when there are Loaned Shares outstanding under this Agreement, Lender makes a distribution in respect of its outstanding Common Stock (in liquidation or otherwise) in property or securities, including any options, warrants, rights or privileges in respect of securities (other than a distribution of Common Stock, but including any options, warrants, rights or privileges exercisable for, convertible into or exchangeable for Common Stock) to the then holder or holders of such Loaned Shares (a “**Non-Cash Distribution**”), Borrower shall deliver to Lender in kind (whether or not Borrower is a holder of any or all of the outstanding Loaned Shares), within one Business Day after the date of such Non-Cash Distribution, the property or securities so distributed in an amount (the “**Delivery Amount**”) equal to the product of (i) the amount per share of Common Stock of such Non-Cash Distribution and (ii) the number of Loaned Shares outstanding at such time; *provided* that in lieu of such delivery, Borrower may deliver to Lender the market value of the Delivery Amount, as determined by the Agent in accordance with market practice for the property or securities constituting the Non-Cash Distribution.

Section 8. *Rights in Respect of Loaned Shares.*

(a) Subject to the terms of this Agreement, including Borrower’s obligation to return the Loaned Shares in accordance with the terms of this Agreement, and except as otherwise agreed by Borrower and Lender, Borrower and any subsequent transferee of Loaned Shares shall have all of the incidents of ownership in respect of any Loaned Shares, including the right to transfer the Loaned Shares to others. Lender hereby waives the right to vote, or to provide any consent or to take any similar action with respect to, the Loaned Shares in the event that the record date or deadline for such vote, consent or other action falls during the term of the Loan. Borrower agrees that it and any of its affiliates that are the record owner of any Loaned Shares will not vote such Loaned Shares on any matter submitted to a vote of Lender’s stockholders generally.

Section 9. *Representations and Warranties.*

(a) Each of Borrower and Lender represent and warrant to the other that:

- (i) it has full power to execute and deliver this Agreement, to enter into the Loans contemplated hereby and to perform its obligations hereunder;
  - (ii) it has taken all necessary action to authorize such execution, delivery and performance;
  - (iii) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms;
- and
- (iv) the execution, delivery and performance of this Agreement does not and will not violate, contravene, or constitute a default under, (A)
-



its certificate of incorporation, bylaws or other governing documents, (B) any laws, rules or regulations of any governmental authority to which it is subject, (C) any contracts, agreements or instrument to which it is a party or (D) any judgment, injunction, order or decree by which it is bound.

(b) Lender represents and warrants to Borrower, as of the date hereof, that the Loaned Shares and all other outstanding shares of Common Stock of the Company have been duly authorized and are validly issued, fully paid nonassessible shares of Common Stock; and the stockholders of Lender have no preemptive rights with respect to the Loaned Shares.

(c) Lender represents and warrants to Borrower, as of the date hereof, that the outstanding shares of Common Stock are quoted on The NASDAQ Global Market.

(d) The representations and warranties of Borrower and Lender under this [Section 9](#) shall remain in full force and effect at all times during the term of this Agreement and shall survive the termination for any reason of this Agreement.

#### Section 10. *Covenants.*

(a) Borrower covenants and agrees with Lender that (i) it will not hedge any short position resulting from the sale of any Loaned Shares (except in connection with a hedge of the Convertible Notes) and (ii) at all times when it is the record owner of, or has the power to give instructions or entitlement orders with respect to, any Loaned Shares, it will not transfer or dispose of such Loaned Shares, in each case except for the purpose of directly or indirectly facilitating the hedging of the Convertible Notes by the holders thereof.

(b) The parties hereto acknowledge that Borrower has informed Lender that Borrower is a “financial institution” within the meaning of Section 101(22) of Title 11 of the United States Code (the “**Bankruptcy Code**”). The parties hereto further acknowledge and agree that (i) each Loan hereunder is intended to be a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code; and (ii) each and every transfer of funds, securities and other property under this Agreement is intended to be a “settlement payment” or a “margin payment,” as such terms are used in Sections 362(b) (6) and 546(e) of the Bankruptcy Code.

(c) Lender shall, no later than five Business Days prior to any repurchase of Common Stock, give Borrower a written notice of such repurchase (a “**Repurchase Notice**”) if, following such repurchase, the Outstanding Borrow Percentage after giving effect to such repurchase would be greater by 0.5% than the Outstanding Borrow Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Outstanding Borrow Percentage as of the date hereof). The “**Outstanding Borrow Percentage**” as of any day is the fraction (A) the numerator of which is the number of Loaned Shares outstanding on such day and (B) the denominator of which is the

---

number of shares of Common Stock outstanding on such day, including such Loaned Shares.

Section 11. *Events of Default.*

(a) All Loans may, at the option of the Lender by a written notice to Borrower (which option shall be deemed exercised, even if no notice is given, immediately on the occurrence of an event specified in either [Section 11\(a\)\(iii\)](#) or [Section 11\(a\)\(iv\)](#) below), be terminated (i) immediately on the occurrence of any of the events set forth in [Section 11\(a\)\(iii\)](#) or [Section 11\(a\)\(iv\)](#) below and (ii) two Business Days following such notice on the occurrence of any of the other events set forth below, (each, a “**Default**”):

(i) Borrower fails to deliver Loaned Shares to Lender as required by [Section 6](#);

(ii) Borrower fails to deliver or pay to Lender when due any cash, securities or other property as required by [Section 7](#);

(iii) the filing by or on behalf of Borrower of a voluntary petition or an answer seeking reorganization, arrangement, readjustment of its debts or for any other relief under any bankruptcy, reorganization, receivership, compromise, arrangement, insolvency, readjustment of debt, dissolution, winding-up or liquidation or similar act or law, of any state, federal or other applicable foreign jurisdictions, now or hereafter existing (“**Bankruptcy Law**”), or any action by Borrower for, or consent or acquiescence to, the appointment of a receiver trustee or other custodian of Borrower, or of all or a substantial part of its property; or the making by Borrower of a general assignment for the benefit of creditors; or the admission by Borrower in writing of its inability to pay its debts as they become due;

(iv) the filing of any involuntary petition against Borrower in bankruptcy or seeking reorganization, arrangement, readjustment of its debts or for any other relief under any Bankruptcy Law and an order for relief by a court having jurisdiction in the premises shall have been issued or entered therein; or any other similar relief shall be granted under any applicable federal or state law or law of any other applicable foreign jurisdictions; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee or other officer having similar powers over Borrower or over all or a part of its property shall have been entered; or the involuntary appointment of an interim receiver, trustee or other custodian of Borrower or of all or a substantial part of its property; or the issuance of a warrant of attachment, execution or similar process against any substantial part of the property of Borrower; and continuance of any such event for 15 consecutive calendar

---

days unless dismissed, bonded to the satisfaction of the court having jurisdiction in the premises or discharged;

(v) Borrower fails to provide any indemnity as required by [Section 14](#);

(vi) Borrower notifies Lender of its inability to or intention not to perform its obligations hereunder or otherwise disaffirms, rejects or repudiates any of its obligations hereunder; or

(vii) any representation made by Borrower in this Agreement or in connection with any Loan or Loans hereunder shall be incorrect or untrue in any material respect during the term of any Loan hereunder or Borrower fails to comply in any material respect with any of its covenants under this Agreement.

Section 12.. *Lender's Remedies.*

(a) Notwithstanding anything to the contrary herein, if, upon the termination of any Loan by Lender under [Section 11](#) and, at the time of such termination, the purchase of Common Stock in an amount equal to all or any portion of the Loaned Shares to be delivered to Lender in accordance with [Section 6\(d\)](#) (i) shall be prohibited by any law, rules or regulation of any governmental authority to which it is or would be subject, (ii) shall violate, or would upon such purchase likely violate, any order or prohibition of any court, tribunal or other governmental authority, (iii) shall require the prior consent of any court, tribunal or governmental authority prior to any such repurchase, (iv) would subject Borrower, in the sole reasonable judgment of Borrower, to any liability or potential liability under any applicable federal securities laws (including, without limitation, Section 16 of the Exchange Act), or (v) shall be commercially impracticable, in the reasonable judgment of Borrower, in the time period required by Section 6(d) (each of (i), (ii), (iii), (iv) and (v), a "**Legal Obstacle**"), then, in each case, Borrower shall immediately notify Lender of the Legal Obstacle and the basis therefor, whereupon Borrower's obligations under [Section 6\(d\)](#) shall be suspended until such time as no Legal Obstacle with respect to such obligations shall exist (a "**Repayment Suspension**"). Following the occurrence of and during the continuation of any Repayment Suspension, Borrower shall use its reasonable best efforts to remove or cure the Legal Obstacle as soon as practicable. If Borrower is unable to remove or cure the Legal Obstacle within five Business Days of the termination of any Loan by Lender under Section 11, Borrower shall pay to Lender, in lieu of the delivery of Loaned Shares in accordance with Section 6(d), an amount in immediately available funds (the "**Replacement Cash**") equal to the product of the Closing Price as of the Business Day immediately preceding the date Borrower makes such payment and the number of Loaned Shares otherwise required to be delivered.

---

(b) If Borrower shall fail to deliver Loaned Shares to Lender pursuant to [Section 6\(d\)](#) when due, then, in addition to any other remedies available to Lender under this Agreement or under applicable law, Lender shall have the right (upon prior written notice to Borrower) to purchase a like amount of Loaned Shares (“**Replacement Shares**”) in the principal market for such securities in a commercially reasonable manner; *provided* that if any Repayment Suspension shall exist and be continuing, Lender may not exercise its right to purchase Replacement Shares unless Borrower shall fail to pay the Replacement Cash to Lender when due in accordance with Section 12(a) above. To the extent Lender shall exercise such right, Borrower’s obligation to return a like amount of Loaned Shares or to pay the Replacement Cash, as applicable, shall terminate and Borrower shall be liable to Lender for the purchase price of Replacement Shares (plus all other amounts, if any, due to Lender hereunder), all of which shall be due and payable within one Business Day of notice to Borrower by Lender of the aggregate purchase price of the Replacement Shares. The purchase price of Replacement Shares purchased under this [Section 12](#) shall include broker’s fees and commissions and all other reasonable costs, fees and expenses related to such purchase; provided that Borrower shall not be liable for any broker’s fees and commissions to the extent that an affiliate of Borrower offered to act as broker for purchases of Replacement Shares and Lender elected to use a different broker.

### Section 13. *Transfers.*

(a) All transfers of Loaned Shares to Lender hereunder shall be made by the crediting by a Clearing Organization of such financial assets to the transferee’s “securities account” (within the meaning of Section 8-501 of the UCC) maintained with such Clearing Organization. In every transfer of “financial assets” (within the meaning of Section 8-102 of the UCC) hereunder, the transferor shall take all steps necessary (a) to effect a delivery of such financial assets to the transferee under Section 8-301 of the UCC, or to cause the creation of a security entitlement in favor of the transferee in such financial assets under Section 8-501 of the UCC, (b) to enable the transferee to obtain “control” (within the meaning of Section 8-106 of the UCC) of such financial assets, and (c) to provide the transferee with comparable rights under any corresponding law or regulation of any other applicable jurisdiction.

(b) All transfers of cash hereunder to Borrower or Lender shall be by wire transfer in immediately available, freely transferable funds.

(c) A transfer of securities or cash may be effected under this [Section 13](#) on any day except (i) a day on which the transferee is closed for business at its address set forth in Section 18 or (ii) a day on which a Clearing Organization or wire transfer system is closed, if the facilities of such Clearing Organization or wire transfer system are required to effect such transfer.

---

Section 14 . *Indemnities.*

(a) Lender hereby agrees to indemnify and hold harmless Borrower and its affiliates and its former, present and future directors, officers, employees and other agents and representatives from and against any and all liabilities, judgments, claims, settlements, losses, damages, fees, liens, taxes, penalties, obligations and expenses (and losses relating to Borrower's market activities as a consequence of becoming, or of the risk of becoming, subject to Section 16(b) under the Exchange Act, including without limitation, any forbearance from market activities or cessation of market activities and any losses in connection therewith or with respect to this Agreement) incurred or suffered by any such person or entity directly or indirectly arising from, by reason of, or in connection with, (i) any breach by Lender of any of its representations or warranties contained in [Section 9](#) or (ii) any breach by Lender of any of its covenants or agreements in this Agreement.

(b) Borrower hereby agrees to indemnify and hold harmless Lender and its affiliates and its former, present and future directors, officers, employees and other agents and representatives from and against any and all liabilities, judgments, claims, settlements, losses, damages, fees, liens, taxes, penalties, obligations and expenses incurred or suffered by any such person or entity directly or indirectly arising from, by reason of, or in connection with (i) any breach by Borrower of any of its representations or warranties contained in [Section 9](#) or (ii) any breach by Borrower of any of its covenants or agreements in this Agreement.

(c) In case any claim or litigation which might give rise to any obligation of a party under this [Section 14](#) (each an "**Indemnifying Party**") shall come to the attention of the party seeking indemnification hereunder (the "**Indemnified Party**"), the Indemnified Party shall promptly notify the Indemnifying Party in writing of the existence and amount thereof; provided that the failure of the Indemnified Party to give such notice shall not adversely affect the right of the Indemnified Party to indemnification under this Agreement, except to the extent the Indemnifying Party is materially prejudiced thereby. The Indemnifying Party shall promptly notify the Indemnified Party in writing if it accepts such claim or litigation as being within its indemnification obligations under this [Section 14](#). Such response shall be delivered no later than 30 days after the initial notification from the Indemnified Party; provided that, if the Indemnifying Party reasonably cannot respond to such notice within 30 days, the Indemnifying Party shall respond to the Indemnified Party as soon thereafter as reasonably possible.

(d) An Indemnifying Party shall be entitled to participate in and, if (i) in the judgment of the Indemnified Party such claim can properly be resolved by money damages alone and the Indemnifying Party has the financial resources to pay such damages and (ii) the Indemnifying Party admits that this indemnity fully covers the claim or litigation, the Indemnifying Party shall be entitled to direct the defense of any claim at its expense, but such defense shall be conducted by legal counsel reasonably satisfactory to the Indemnified Party. An Indemnified Party

---

shall not make any settlement of any claim or litigation under this [Section 14](#) without the written consent of the Indemnifying Party.

Section 15. *Termination Of Agreement.*

(a) This Agreement may be terminated (i) at any time by the written agreement of Lender and Borrower, or (ii) by Lender upon the occurrence of a Default.

(b) Unless otherwise agreed by Borrower and Lender, the provisions of [Section 14](#) shall survive the termination of this Agreement.

Section 16. *[Omitted].*

Section 17. *Guarantee.* Guarantor shall execute a guarantee in favor of Lender substantially in the form attached hereto as Annex A (the “**Guarantee**”) that will guaranty all obligations of Borrower with respect to this Agreement.

Section 18. *Notices.*

(a) All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when received.

(b) All such notices and other communications shall be directed to the following address:

(i) If to Borrower or Agent to:

Citigroup Global Markets Inc.  
390 Greenwich Street  
New York, NY 10013  
Telephone: 212-723-7323  
Telecopier: 212-723-8871  
Attention: Suvir Thadani

---

(ii) If to Lender to:

Charter Communications, Inc.  
12405 Powerscourt Drive  
St. Louis, Missouri 63131  
Attention: Executive Vice President and General Counsel  
Telecopier No.: (314) 965-0555

With a copy to:

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166  
Attention: Dennis J. Friedman, Esq.  
Telecopier No.: (212) 351-6201

In the case of any party, at such other address as may be designated by written notice to the other parties.

Section 19. *Governing Law; Submission To Jurisdiction; Severability.*

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, but excluding any choice of law provisions that would require the application of the laws of a jurisdiction other than New York.

(b) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK CITY, AND ANY APPELLATE COURT FROM ANY SUCH COURT, SOLELY FOR THE PURPOSE OF ANY SUIT, ACTION OR PROCEEDING BROUGHT TO ENFORCE ITS OBLIGATIONS HEREUNDER OR RELATING IN ANY WAY TO THIS AGREEMENT OR ANY LOAN HEREUNDER AND (B) WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, ANY DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND ANY RIGHT OF JURISDICTION ON ACCOUNT OF ITS PLACE OF RESIDENCE OR DOMICILE.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY RIGHT THAT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(d) To the extent permitted by law, the unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

---

Section 20.. *Designation of Replacement Collateral Agent.* If at any time while this Agreement is in effect (i) Citigroup Global Markets Inc. ceases to be a Securities Intermediary or (ii) Lender shall determine, in its sole discretion, that any of the relationships by or among the parties hereto are reasonably likely to prevent Lender from acquiring, or jeopardize the continuation of, a first priority security interest in any Collateral, Lender shall be entitled, following the occurrence and during the continuance of any Collateral Trigger Event, to designate a bank or trust company reasonably satisfactory to Borrower as a successor Collateral Agent. In the event of a designation of a successor Collateral Agent, each of the parties to this Agreement agrees to take all such actions as are reasonably necessary to effect the transfer of rights and obligations of Citigroup Global Markets Inc. as Collateral Agent hereunder to such successor Collateral Agent, including the execution and delivery of amendments to this Agreement as shall be necessary to effect such designation and transfer.

Section 21. *Counterparts.* This Agreement may be executed in any number of counterparts, and all such counterparts taken together shall be deemed to constitute one and the same agreement.

---



IN WITNESS WHEREOF, the parties hereto to have executed this Share Lending Agreement as of the date and year first above written.

CHARTER COMMUNICATIONS, INC. as Lender

CITIGROUP GLOBAL MARKETS LIMITED as Borrower

By: /s/ Thomas J. Degnan

Name: Thomas J. Degnan

Title: Vice President - Finance and Corporate Treasurer

By: /s/ Daniel Richards

Name: Daniel Richards

Title: Managing Director

CITIGROUP GLOBAL MARKETS INC. as Collateral Agent

CITIGROUP GLOBAL MARKETS INC. as Agent

By: /s/ Daniel Richards

Name: Daniel Richards

Title: Managing Director

By: /s/ Daniel Richards

Name: Daniel Richards

Title: Managing Director

---

## Annex A

### Form of Guarantee

**Guarantee**, dated as of October 2, 2007, of CITIGROUP GLOBAL MARKETS HOLDINGS INC., a New York corporation (the “Guarantor”), in favor of CHARTER COMMUNICATIONS, INC. (the “Counterparty”).

1. **Guarantee.** In order to induce the Counterparty to amend and restate as of the date hereof the Share Lending Agreement, dated as of November 22, 2004 (the “Agreement” and as such Agreement is amended and restated as of the date hereof, the “Amended and Restated Agreement”), with the Guarantor's wholly-owned subsidiary Citigroup Global Markets Limited (“Citigroup”), the Guarantor absolutely and unconditionally guarantees to the Counterparty, its successors and permitted assigns, the prompt payment of all amounts payable by Citigroup under the Amended and Restated Agreement, whether due or to become due, secured or unsecured, joint or several after taking into account the proceeds of liquidation of any collateral or other security held by the Counterparty (the “Obligations”) all without regard to any counterclaim, set-off, deduction or defense of any kind which Citigroup or the Guarantor may have or assert, and without abatement, suspension, deferment or diminution on account of any event or condition whatsoever; provided however, that Guarantor's obligations under this Guarantee shall be subject to Citigroup's defenses, rights to set-off, counterclaim or withhold payment as provided in the Amended and Restated Agreement. Any capitalized term used herein and not otherwise defined shall have the meaning assigned to it in the Amended and Restated Agreement.

---

2. **Nature of Guarantee.** This Guarantee is a guarantee of payment and not of collection. The Counterparty shall not be obligated, as a condition precedent to performance by the Guarantor hereunder, to file any claim relating to the Obligations in the event that Citigroup becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of the Counterparty to file a claim shall not affect the Guarantor's obligations hereunder. This Guarantee shall continue to be effective or be reinstated if any payment to the Counterparty by Citigroup on account of any Obligation is returned to Citigroup or is rescinded upon the insolvency, bankruptcy or reorganization of Citigroup.

3. **Consents, Waivers and Renewals.** The Guarantor agrees that the Counterparty may at any time and from time to time, either before or after the maturity thereof, without notice to or further consent of the Guarantor, change the time, manner or place of payment or any other term of, any Obligation, exchange, release, nonperfection or surrender any collateral for, or renew or change any term of any of the Obligations owing to it, and may also enter into a written agreement with Citigroup or with any other party to the Amended and Restated Agreement or person liable on any Obligation, or interested therein, for the extension, renewal, payment, compromise, modification, waiver, discharge or release thereof, in whole or in part, without impairing or affecting this Guarantee. The Obligations of the Guarantor under this Guarantee are unconditional, irrespective of the value, genuineness, validity, or enforceability of the Obligations. The Guarantor waives demands, promptness, diligence and all notices that may be required by law or to perfect the Counterparty's rights hereunder except notice to the Guarantor of a default by Citigroup under the Amended and Restated Agreement. No failure, delay or single or partial exercise by the Counterparty of its rights or remedies hereunder shall operate as a waiver of such rights or

---

remedies. All rights and remedies hereunder or allowed by law shall be cumulative and exercisable from time to time.

4. **Representations and Warranties.** The Guarantor hereby represents and warrants that:

(i) the Guarantor is duly organized, validly existing and in good standing under the laws of the State of New York;

(ii) the Guarantor has the requisite corporate power and authority to issue this Guarantee and to perform its obligations hereunder, and has duly authorized, executed and delivered this Guarantee;

(iii) the Guarantor is not required to obtain any authorization, consent, approval, exemption or license from, or to file any registration with, any government authority as a condition to the validity of, or to the execution, delivery or performance of, this Guarantee;

(iv) as of the date of this Guarantee, there is no action, suit or proceeding pending or threatened against the Guarantor before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision which could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations under, or which in any manner questions the validity of, this Guarantee;

(v) the execution, delivery and performance of this Guarantee by the Guarantor does not contravene or constitute a default under any statute, regulation or rule of any governmental authority or under any provision of the Guarantor's certificate of incorporation or by-laws or any contractual restriction binding on the Guarantor; and

(vi) this Guarantee constitutes the legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, subject to

---

the effect of any bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5. **Subrogation.** Upon payment by Guarantor of any sums to Counterparty under this Guarantee, all rights of Guarantor against Citigroup arising as a result thereof by way of right of subrogation or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full of all the obligations of Citigroup under the Amended and Restated Agreement, including all Transactions then in effect between Citigroup and Counterparty.

6. **Termination.** This Guarantee is a continuing guarantee and shall remain in full force and effect until such time as it may be revoked by the Guarantor by notice given to the Counterparty, such notice to be deemed effective upon receipt thereof by the Counterparty or at such later date as may be specified in such notice; provided, however, that such revocation shall not limit or terminate this Guarantee in respect of any Transaction effected under the Amended and Restated Agreement which shall have been entered into prior to the effectiveness of such revocation. Notwithstanding anything to the contrary in this Paragraph 6, this Guarantee shall terminate, and Guarantor shall be released from all of the Obligations hereunder with respect to any Transaction(s), immediately upon the transfer or assignment of such Transaction(s) to an entity which is not an Affiliate of Citigroup (as such term is defined in Section 14 of the Amended and Restated Agreement), if such transfer or assignment is completed in accordance with the provisions of Section 7 of the Amended and Restated Agreement.

---

7. **Notices.** Any notice or communication required or permitted to be made hereunder shall be made in the same manner and with the same effect, unless otherwise specifically provided herein, as set forth in the Amended and Restated Agreement.

8. **GOVERNING LAW; JURISDICTION.** THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO CHOICE OF LAW DOCTRINE AND WITHOUT GIVING EFFECT TO ANY PROVISION THEREOF THAT WOULD PERMIT OR REQUIRE THE LAWS OF ANOTHER JURISDICTION TO APPLY. THE GUARANTOR HEREBY IRREVOCABLY CONSENTS TO, FOR THE PURPOSES OF ANY PROCEEDING ARISING OUT OF THIS GUARANTEE, THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK CITY.

9. **Miscellaneous.** Each reference herein to the Guarantor, Counterparty or Citigroup shall be deemed to include their respective successors and assigns. The provisions hereof shall inure in favor of each such successor or assign. This Guarantee (i) shall supersede any prior or contemporaneous representations, statements or agreements, oral or written, made by or between the parties with regard to the subject matter hereof, (ii) may be amended only by a written instrument executed by the Guarantor and Counterparty and (iii) may not be assigned by either party without the prior written consent of the other party.

---

In Witness Whereof, the undersigned has executed this Guarantee as of the date first above written.

**CITIGROUP GLOBAL MARKETS  
HOLDINGS INC.**

By: /s/ Daniel Richards

Name: Daniel Richards

Title: Managing Director

AMENDED AND RESTATED UNIT LENDING AGREEMENT

Dated as of October 2, 2007

Between

CHARTER COMMUNICATIONS HOLDING COMPANY, LLC ("LENDER"),

and

CHARTER COMMUNICATIONS, INC. ("BORROWER").

WHEREAS, in connection with the issuance by Lender of \$862,500,000 aggregate principal amount of 2009 Mirror Convertible Senior Notes (as defined herein), Lender and Borrower entered into that certain Unit Lending Agreement dated as of November 22, 2004 (the "**Unit Lending Agreement**");

WHEREAS, Lender and Borrower desire to amend and restate the Unit Lending Agreement in connection with an exchange offer (the "**Exchange Offer**") pursuant to which \$363,847,000 aggregate principal amount of 2009 Mirror Convertible Notes are being exchanged for 2027 Mirror Convertible Notes (as defined herein) in order to maintain and extend the Loans (as defined herein) to Borrower under the Unit Lending Agreement; and

WHEREAS, this AGREEMENT sets forth the terms and conditions under which Lender and Borrower agree to maintain and extend the Loans made to Borrower under the Unit Lending Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby mutually covenant and agree as follows:

This AGREEMENT sets forth the terms and conditions under which Borrower may, from time to time, borrow from Lender Class B Common Units of Lender.

The parties hereto agree as follows:

Section 1. Certain Definitions. The following capitalized terms shall have the following meanings:

"2009 MIRROR CONVERTIBLE NOTES" means the \$862,500,000 aggregate principal amount of Convertible Senior Notes due 2009 issued by Lender.

"2027 MIRROR CONVERTIBLE NOTES" means the \$479,168,000 aggregate principal amount of Convertible Senior Notes due 2027 issued by Lender.

---



"BUSINESS DAY" means a day on which regular trading occurs in the principal trading market for the common stock of Borrower.

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

"CONVERTIBLE NOTES" means collectively the \$862,500,000 aggregate principal amount of Convertible Senior Notes due 2009 issued by Lender and the \$479,168,000 aggregate principal amount of Convertible Senior Notes due 2027 issued by Lender.

"COMMON STOCK" means shares of Class A Common Stock, par value \$.001, of Borrower, or any other security into which the Common Stock shall be exchanged or converted as the result of any merger, consolidation, other business combination, reorganization, reclassification, recapitalization or other corporate action (including, without limitation, a reorganization in bankruptcy).

"FACILITY TERMINATION DATE" means the earlier to occur of (i) the first date on which all of the Convertible Notes have been converted, repaid, repurchased, redeemed or are otherwise no longer outstanding, and (ii) October 1, 2027.

"LLC AGREEMENT" means the Amended and Restated Limited Liability Company Agreement of Charter Communications Holding Company, LLC.

"LOAN AVAILABILITY PERIOD" means the period that began on November 22, 2004 and ended on November 16, 2006.

"LOANED SHARES" means shares of Common Stock transferred in a Loan as defined in and pursuant to the Share Lending Agreement until such Common Stock (or identical Common Stock) is transferred back to Lender thereunder. If, as the result of a stock dividend, stock split or reverse stock split, the number of outstanding shares of Common Stock is increased or decreased, then the number of outstanding Loaned Shares shall be proportionately increased or decreased, as the case may be. If any new or different security (or two or more securities) shall be exchanged for the outstanding shares of Common Stock as the result of any reorganization, merger, consolidation, other business combination, reclassification, recapitalization or other corporate action (including, without limitation, a reorganization in bankruptcy), such new or different security (or such two or more securities collectively) shall, effective upon such exchange, be deemed to become a Loaned Share in substitution for the former Loaned Share for which such exchange is made and in the same proportion for which such exchange was made.

"LOANED UNITS" means Units transferred in a Loan hereunder until such Units are returned to Lender hereunder and cancelled. If, as the result of a stock dividend, stock split or reverse stock split by Borrower, the number of outstanding shares of Common Stock is increased or decreased, then the number of outstanding Loaned Units shall be

---

proportionately increased or decreased, as the case may be. If any new or different security (or two or more securities) shall be exchanged for the outstanding shares of Common Stock as the result of any reorganization, merger, consolidation, other business combination, reclassification, recapitalization or other corporate action with respect to

Borrower (including, without limitation, a reorganization in bankruptcy), such new or different security (or such two or more securities collectively) or mirror securities of Lender, as appropriate, shall, effective upon such exchange, be deemed to become a Loaned Unit in substitution for the former Loaned Unit for which such exchange is made and in the same proportion for which such exchange was made.

"MAXIMUM NUMBER OF UNITS" means 29,845,200 Units, subject to the following adjustments:

(a) If, as the result of a stock dividend, stock split or reverse stock split by Borrower, the number of outstanding shares of Common Stock is increased or decreased, the Maximum Number of Units shall, effective as of the payment or delivery date of any such event, be proportionally increased or decreased, as the case may be.

(b) If, pursuant to a merger, consolidation, other business combination, reorganization, reclassification, recapitalization or other corporate action (including, without limitation, a reorganization in bankruptcy) involving the Borrower and the result of which is that Lender remains in existence, the Common Stock is exchanged for or converted into Cash, securities or other property, the Maximum Number of Units shall, effective upon such exchange, be adjusted by multiplying the Maximum Number of Units at such time by the number of securities, the amount of Cash or the fair market value of any other property exchanged for one share of Common Stock in such event (or mirror securities or property, as the case may be exchanged for one Unit).

Upon the termination of any Loan pursuant to Section 4(a), the Maximum Number of Units shall be reduced by the number of Loaned Units surrendered by Borrower to Lender; provided that if the number of Loaned Units corresponding to an Unsold Amount (as defined in the Share Lending Agreement) is properly returned to Lender at the time that the Unsold Amount is properly returned to Borrower under the Share Lending Agreement, such returned Units shall not so reduce the Maximum Number of Units.

"SHARE LENDING AGREEMENT" means that certain Amended and Restated Share Lending Agreement, dated of even date hereof, between Borrower and Citigroup Global Markets Limited.

"UNITS" means Class B Common Units of Lender.

## Section 2. Loans Of Units; Transfers of Loaned Units

(a) During the Loan Availability Period, Lender loaned to Borrower 116,949,300 Units, of which 29,845,200 Units remain outstanding as of the date hereof. Such loans were made subject to the terms of the Unit Lending Agreement (each such issuance and

---

loan, a "LOAN") and were confirmed by a schedule and receipt listing the Loaned Units provided by Borrower to Lender (the "CONFIRMATION"). Such Confirmation constitutes conclusive evidence with respect to the Loan, including the number of Units that are the subject of the Loan to which the Confirmation relates, until such Loan is terminated and the Loaned Units are returned to Lender in accordance with this Agreement.

Section 3. Loan Fee. Borrower paid Lender a single loan fee per Loan (a "LOAN FEE") equal to \$.001 per Loaned Unit included in such Loan.

Section 4. Loan Terminations.

(a) Borrower may terminate all or any portion of a Loan on any Business Day by giving written notice thereof to Lender, without any consideration being payable in respect thereof by Lender to Borrower. Any such loan termination shall be effective upon such written notice in accordance with the terms hereof and Lender shall amend its LLC Agreement (and in any event, without the necessity of any action by Lender, Lender's LLC Agreement shall automatically be deemed to be amended) to reflect the reduction in the number of outstanding Units.

(b) All outstanding Loans shall terminate on the first Business Day following the Facility Termination Date and all Loaned Units then outstanding, if any, shall be cancelled by Lender by amending its LLC Agreement (and in any event, without the necessity of any action by Lender, Lender's LLC Agreement shall automatically be deemed to be amended), without any consideration being payable in respect thereof by Lender to Borrower, on the day that Borrower receives the Loaned Shares under the Share Lending Agreement from its Borrower thereunder.

(c) If on any date, the number of Loaned Units exceeds the Maximum Number of Units, the number of Loaned Units in excess of the Maximum Number of Units shall be cancelled by Lender by amending its LLC Agreement (and in any event, without the necessity of any action by Lender, Lender's LLC Agreement shall automatically be deemed to be amended), without any consideration being payable in respect thereof by Lender to Borrower, on the day that Borrower receives the equivalent number of Loaned Shares under the Share Lending Agreement from its Borrower thereunder.

(d) If a Loan is terminated upon the occurrence of a Default as set forth in Section 8 or if the Share Lending Agreement is terminated pursuant to Section 11 thereof, the Loaned Units shall be cancelled by Lender by amending its LLC Agreement (and in any event, without the necessity of any action by Lender, Lender's LLC Agreement shall automatically be deemed to be amended), without any consideration being payable in respect thereof by Lender to Borrower, on the day that Borrower receives the Loaned Shares under the Share Lending Agreement from its Borrower thereunder.

---

## Section 5. Distributions.

(a) If at any time when there are Loaned Units outstanding under this Agreement, Lender makes a Cash distribution in respect of its outstanding Units, Borrower shall pay to Lender (whether or not Borrower is a holder of any or all of the outstanding Loan Units), within one Business Day after the payment of such distribution, an amount in Cash equal to the product of (i) the amount per Unit of such dividend or distribution and (ii) the number of Loaned Units outstanding at such time.

(b) If at any time when there are Loaned Units outstanding under this Agreement, Lender makes a distribution in respect of its outstanding Units in property or securities, including any options, warrants, rights or privileges in respect of securities (other than a distribution of Units, but including any options, warrants, rights or privileges exercisable for, convertible into or exchangeable for Units) to the then holder or holders of such Loaned Units (a "NON-CASH DISTRIBUTION"), Borrower shall deliver to Lender in kind (whether or not Borrower is a holder of any or all of the outstanding Loaned Units), within one Business Day after the date of such Non-Cash Distribution, the property or securities so distributed in an amount (the "DELIVERY AMOUNT") equal to the product of (i) the amount per Unit of such Non-Cash Distribution and (ii) the number of Loaned Units outstanding at such time; provided that in lieu of such delivery, Borrower may deliver to Lender the market value of the Delivery Amount, as determined by the Agent (as defined in the Share Lending Agreement) in accordance with market practice for the property or securities constituting the Non-Cash Distribution.

Section 6. Rights in Respect of Loaned Units. Subject to the terms of this Agreement, including Borrower's obligation to return the Loaned Units in accordance with the terms of this Agreement, and except as otherwise agreed by Borrower and Lender, Borrower shall have all of the incidents of ownership in respect of any Loaned Units.

## Section 7. Covenants.

(a) Any Cash or other property received by Borrower pursuant to the Share Lending Agreement shall be paid or transferred immediately to Lender.

(b) If Borrower determines that it will redeem or purchase shares of Common Stock pursuant to the Share Lending Agreement, Borrower will notify Lender in writing of the number of shares of Common Stock to be redeemed and the aggregate cost of such redemption at least two Business Days prior to settlement of such redemption. On the date of settlement of such redemption, Lender will redeem the number of Units equal to the number of shares of Common Stock provided in Borrower's notice for the amount of Cash or other property provided in such notice.

---

Section 8. Events of Default.

All Loans may, at the option of the Lender by a written notice to Borrower, be terminated two Business Days following such notice on the occurrence of the events set forth below, (each, a "DEFAULT"):

(a) Borrower fails to deliver or pay to Lender when due any Cash, securities or other property as required by Section 5; or

(b) Borrower notifies Lender of its inability to or intention not to perform its obligations hereunder or otherwise disaffirms, rejects or repudiates any of its obligations hereunder.

Section 9. Limitation on Lender's Remedies. Notwithstanding anything to the contrary herein, upon the termination of any Loan by Lender under Section 8 or upon any other breach of this Agreement by Borrower, Lender shall only be entitled to cancel Loaned Units at the time that Borrower receives Loaned Shares from its borrower under the Share Lending Agreement. Furthermore, Lender shall only be entitled to the receipt of any other form of damages or compensation at the time and to the extent that Borrower receives damages and compensation under the Share Lending Agreement.

Section 10. Transfers.

(a) All transfers of Loaned Units to Borrower hereunder shall be made by appropriate amendment to Lender's LLC Agreement.

(b) All transfers of Cash hereunder to Borrower or Lender shall be by wire transfer or internal bank book entry debit/credit in immediately available, freely transferable funds.

(c) A transfer of securities or Cash may be effected under this Section 10 on any day except (i) a day on which the transferee is closed for business at its address set forth in Section 12 or (ii) a day on which a wire transfer system is closed, if the facilities of such wire transfer system are required to effect such transfer.

Section 11. Termination of Agreement. This Agreement may be terminated at any time by the written agreement of Lender and Borrower.

Section 12 Notices.

(a) All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when received.

(b) All such notices and other communications shall be directed to the following address:

---

If to Borrower or Lender to:

Charter Communications, Inc.  
12405 Powercourt Dr.  
St. Louis, MO 63131  
Telephone: 314-965-0555  
Telecopier: 314-965-8793  
Attention: General Counsel

(c) In the case of any party, at such other address as may be designated by written notice to the other parties.

Section 13. Governing Law; Submission To Jurisdiction; Severability.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, but excluding any choice of law provisions that would require the application of the laws of a jurisdiction other than New York.

(b) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK CITY, AND ANY APPELLATE COURT FROM ANY SUCH COURT, SOLELY FOR THE PURPOSE OF ANY SUIT, ACTION OR PROCEEDING BROUGHT TO ENFORCE ITS OBLIGATIONS HEREUNDER OR RELATING IN ANY WAY TO THIS AGREEMENT OR ANY LOAN HEREUNDER AND (B) WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, ANY DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND ANY RIGHT OF JURISDICTION ON ACCOUNT OF ITS PLACE OF RESIDENCE OR DOMICILE.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY RIGHT THAT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(d) To the extent permitted by law, the unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

Section 14. Counterparts. This Agreement may be executed in any number of counterparts, and all such counterparts taken together shall be deemed to constitute one and the same agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

---

IN WITNESS WHEREOF, the parties hereto to have executed this Unit Lending Agreement as of the date and year first above written.

CHARTER COMMUNICATIONS  
HOLDING COMPANY, LLC  
as Lender,

By: /s/ Thomas M. Degnan  
Name: Thomas M. Degnan  
Title: Vice President – Finance and  
Corporate Treasurer

CHARTER COMMUNICATIONS, INC.  
as Borrower,

By: /s/ Thomas M. Degnan  
Name: Thomas M. Degnan  
Title: Vice President – Finance and  
Corporate Treasurer

CHARTER COMMUNICATIONS HOLDING COMPANY, LLC

6.50% MIRROR CONVERTIBLE SENIOR NOTE DUE 2027

ISSUE DATE OCTOBER 2, 2007

IN THE ORIGINAL PRINCIPAL AMOUNT OF \$479,168,000

---



THIS MIRROR NOTE dated October 2, 2007, is made by Charter Communications Holding Company, LLC, a Delaware limited liability company (including any successor, "Obligor"), in favor of Charter Communications, Inc., a Delaware corporation (including any successor, "CCI").

Reference is hereby made to the Indenture, dated as of October 2, 2007 between CCI and The Bank of New York Trust Company, N.A., as trustee, as amended or supplemented from time to time (the "Indenture").

Obligor and Holder agree as follows for the benefit of each other:

## ARTICLE 1

### DEFINITIONS

Section 1.01. Definitions. Capitalized terms used and not otherwise defined herein shall have the respective meanings assigned to them in the Indenture, whether directly or by reference. As used herein, the following terms shall have the following meanings:

"CCI Event of Default" means an Event of Default under the Indenture.

"CCI Interest Payment Date" means an Interest Payment Date under the Indenture.

"CCI Notes" means the 6.50% Convertible Senior Notes due 2027 of Holder issued pursuant to the Indenture.

"CCI Redemption Date" means any date fixed for redemption of CCI Notes pursuant to the Indenture.

"CCI Redemption Price", when used with respect to any CCI Notes to be redeemed, means the price at which any such CCI Notes are to be redeemed pursuant to the Indenture.

"CCI Repurchase Date" means a Fundamental Change Repurchase Date or a Five-Year Repurchase Date, as the case may be.

"CCI Repurchase Price" when used with respect to any CCI Notes to be repurchased, means the price at which any such CCI Notes are to be repurchased pursuant to the Indenture.

"Holder" means initially CCI, and any successor or assignee of CCI which acquires CCI's interest in this Mirror Note pursuant to a transaction permitted by the Indenture and by the organizational documents of Holder and Obligor.

"Indenture" has the meaning specified in the recitals.

---

"Manager" means Charter Communications, Inc., in its capacity as manager of Obligor.

"Membership Units" means Class B Common Units of Obligor.

"Mirror Conversion Rate" has the meaning specified in Section 6.01 hereof.

"Mirror Default" means any event that is, or with the passage of time or the giving of notice or both would be, a Mirror Event of Default.

"Mirror Event of Default" has the meaning specified in Section 5.01 hereof.

"Mirror Fundamental Change Repurchase Date" means a date that is one Business Day prior to a Fundamental Change Repurchase Date under the Indenture.

"Mirror Interest Payment Date" means the Stated Maturity of a payment of interest on this Mirror Note.

"Mirror Note" means this 6.50% Mirror Convertible Senior Note due 2027.

"Mirror Redemption Date" means a date that is a CCI Redemption Date.

"Mirror Redemption Price" has the meaning specified in Section 301.

"Mirror Repurchase Date" means a date that is a CCI Repurchase Date.

"Mirror Repurchase Price" has the meaning specified in Section 7.01 hereof.

"Principal Amount" means, with respect to this Mirror Note, the original principal amount on the Issue Date of \$479,168,000 (Four Hundred Seventy-Nine Million One Hundred Sixty-Eight Thousand Dollars), as the same may be reduced from time to time by redemption, repurchase, conversion or otherwise.

"CCI Redemption Make-Whole Amount" means the Redemption Make-Whole Amount determined by Section 10.08 of the Indenture.

"Significant Subsidiary" means any Subsidiary of Obligor which is a "Significant Subsidiary" as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act.

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

Section 1.02. Rules of Construction.

---

Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) "or" is not exclusive and "including" is not limiting;

(d) words in the singular include the plural, and in the plural include the singular;

(e) provisions apply to successive events and transactions;

(f) 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;

(g) references to any statute, law, rule or regulation shall be deemed to refer to the same as from time to time amended and in effect and to any successor statute, law, rule or regulation; and

(h) references to any contract, agreement or instrument shall mean the same as amended, modified, supplemented or amended and restated from time to time, in each case, in accordance with any applicable restrictions contained in this Mirror Note.

## ARTICLE 2

### MIRROR NOTE TERMS

#### Section 2.01. Repayment Principal.

Obligor promises to pay to Holder the outstanding Principal Amount of this Mirror Note on October 1, 2027.

#### Section 2.02. Interest.

Obligor promises to pay to Holder interest on the Principal Amount of this Mirror Note at the rate of 6.50% per annum from October 2, 2007 until this Mirror Note has been repaid in full. Obligor will pay interest semi-annually in arrears on April 1 and October 1 of each year (each a "Mirror Interest Payment Date"), or if any such day is not a Business Day, on the next succeeding Business Day. Interest on this Mirror Note will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance. The first Mirror Interest Payment Date shall be April 1, 2008. Obligor shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on the overdue Principal Amount and premium, at a rate that is equal to 1% per annum in excess of the rate then in effect pursuant to the

---

terms of this Mirror Note to the extent lawful; Obligor shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) at the same rate to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

#### Section 2.03. Method of Payment.

This Mirror Note shall be payable as to principal, premium, if any, and interest in immediately available funds in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. All payments hereunder shall be made on the due date or on the Business Day prior to the due date.

#### Section 2.04. Outstanding Principal Amount of Mirror Note.

To the extent that any portion of the Principal Amount of this Mirror Note is considered paid pursuant to Section 4.01, such amount shall cease to be outstanding and cease to accrue interest.

#### Section 2.05. Defaulted Interest.

If Obligor defaults in a payment of interest on this Mirror Note, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest to Holder at the rate provided in Section 2.02 hereof, in the amounts, on the terms, and on the date on which Holder makes any required payment of defaulted interest on the CCI Notes.

### ARTICLE 3

#### REDEMPTION AND PREPAYMENT

##### Section 3.01. Redemption.

(a) If Holder has elected to exercise the option to redeem all or any portion of the CCI Notes by Holder pursuant to Section 3.07 of the Indenture, Obligor shall, on the date of such redemption, redeem a portion of this Mirror Note equal to 100% of the aggregate principal amount of the CCI Notes being so redeemed. Such redemption shall be for a redemption price (the "Mirror Redemption Price") equal to the aggregate CCI Redemption Price being paid by Holder, plus, subject to Section 3.02, interest accrued on the portion of this Mirror Note being redeemed to but excluding the applicable CCI Redemption Date. In addition, in the event that Holder is required to pay any CCI Redemption Make Whole Amount, Obligor shall pay to Holder on such Mirror Redemption Date an amount equal to such CCI Redemption Make Whole Amount.

(b) If and to the extent, as a result of the conversion of the CCI Notes for which notice of redemption was given, Holder, rather than paying CCI Redemption Price

---

(including any CCI Redemption Make Whole Amount payable in respect thereof) in cash, issues shares of Common Stock to the holders of the subject CCI Notes (including, if applicable, in payment of the CCI Redemption Make Whole Amount), Obligor shall on the related Mirror Redemption Date issue Membership Units to Holder in a number equal to the number of shares of Common Stock so issued by Holder to holders of the CCI Notes, in lieu of all or the applicable portion of the cash payment otherwise payable on such Mirror Redemption Date in respect of this Mirror Note, as described in paragraph (a) of this Section 3.01.

#### Section 3.02. Payment of Mirror Redemption Price.

At or prior to 9:30 a.m., New York City time on the Mirror Redemption Date, Obligor shall pay to Holder the Mirror Redemption Price in respect of the portion of this Mirror Note being redeemed on such Mirror Redemption Date.

If Obligor complies with the provisions of the preceding paragraph, on and after the Mirror Redemption Date, interest shall cease to accrue on the portion of the Principal Amount of this Mirror Note redeemed. If any of the CCI Notes are redeemed on or after a Regular Record Date under the Indenture but on or prior to the related Mirror Interest Payment Date, and any accrued and unpaid interest is paid to the holders of such CCI Notes by Holder at the close of business on such Regular Record Date pursuant to the Indenture, then Obligor shall pay to Holder interest on this Mirror Note in an amount equal to the amount paid by Holder to the holders of such CCI Notes. If Holder fails to redeem any CCI Notes in accordance with Section 3.05 of the Indenture and, as a result, interest on such CCI Notes accrues and becomes payable at the rate described in Section 3.05 of the Indenture, then interest payable by Obligor to Holder hereunder on such Principal Amount hereof corresponding to the aggregate principal amount of the affected CCI Notes shall likewise accrue and become payable by Obligor to Holder at the rate described in Section 3.05 of the Indenture, for so long as interest on such CCI Notes remains payable at such rate.

#### Section 3.03. Mandatory Redemption.

Except as otherwise provided in Article 7, Obligor shall not be required to make mandatory redemption payments with respect to this Mirror Note.

### ARTICLE 4

#### COVENANTS

#### Section 4.01. Payment of Mirror Note.

Obligor shall pay or cause to be paid the principal, premium, if any, and interest on this Mirror Note on the dates and in the manner provided herein. Principal, premium, if any, and interest shall be considered paid on the date due if Holder holds as of 9:30 a.m. New York City time on the due date money deposited by Obligor in immediately

---

available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

#### Section 4.02. Limited Liability Company Existence.

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

#### Section 4.03. Stay, Extension and Usury Laws.

Obligor 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 Mirror Note; and Obligor (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law.

### ARTICLE 5

#### DEFAULTS AND REMEDIES

##### Section 5.01. Events of Default.

A "Mirror Event of Default" shall have occurred if:

- (a) Obligor defaults in the payment when due of interest on this Mirror Note and such default continues for a period of 30 days;
- (b) Obligor defaults in payment when due of the principal or premium, if any, on this Mirror Notes; or
- (c) A CCI Event of Default has occurred.

##### Section 5.02. Acceleration.

Upon the acceleration of any amounts payable by Holder pursuant to Section

---

6.02 of the Indenture, the same Principal Amount of this Mirror Note, together with any accrued and unpaid interest thereon, shall immediately and automatically become due and payable by Obligor to Holder.

Holder by written notice to Obligor may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing CCI Events of Default under the Indenture (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived; provided that such rescission shall be automatic if such acceleration has been rescinded pursuant to the terms of the Indenture.

#### Section 5.03. Other Remedies.

If a Mirror Event of Default occurs and is continuing, Holder may pursue any available remedy to collect the payment of principal, premium, if any, and interest on this Mirror Note or to enforce the performance of any provision of this Mirror Note.

A delay or omission by Holder in exercising any right or remedy accruing upon a Mirror Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Mirror Event of Default. All remedies are cumulative to the extent permitted by law.

#### Section 5.04. Waiver of Existing Mirror Defaults.

Holder by the adoption of a resolution of Holder's board of directors may waive an existing Mirror Default or Mirror Event of Default and its consequences hereunder; provided, that such waiver shall be automatic in the case of any Mirror Event of Default predicated solely on a CCI Event of Default, to the extent that the underlying CCI Event of Default has been cured or waived in accordance with the Indenture. Upon any such waiver, such Mirror Default shall cease to exist, and any Mirror Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Mirror Note; but no such waiver shall extend to any subsequent or other Mirror Default or impair any right consequent thereon.

## ARTICLE 6

### CONVERSION OF MIRROR NOTE

#### Section 6.01. Conversion and Conversion Rate.

Subject to and upon compliance with the provisions of this Article 6, upon conversion of any principal amount of the CCI Notes pursuant to the terms of the Indenture, a portion of this Mirror Note in a Principal Amount equal to the principal amount of the CCI Notes so converted shall convert automatically into fully paid and nonassessable (calculated as to each conversion to the nearest 1/100th of a Membership Unit) Membership Units of Obligor at the Mirror Conversion Rate, determined as hereinafter

---

provided, in effect at the time of conversion, plus a number of Membership Units equal to the number of shares of Common Stock issued in payment of the CCI Redemption Make Whole Amount if required to be paid by CCI to the converting holders of the CCI Notes pursuant to the terms of the Indenture and to the extent paid by CCI to such holders in Common Stock.

The rate at which Membership Units shall be delivered upon conversion (herein called the "Mirror Conversion Rate") shall be initially 293.3868 Membership Units for each U.S. \$1,000 principal amount of this Mirror Note. The Mirror Conversion Rate shall be adjusted (rounded to four decimal places) in certain instances as provided in this Article 6.

Notwithstanding the foregoing, to the extent the Holder elects pursuant to the terms of the Indenture to pay all or any portion of the conversion price of the CCI Notes (the "CCI Conversion Price") being converted in cash rather than Common Stock, the Obligor shall pay cash to the Holder in an amount equal to the portion of the CCI Conversion Price of the CCI Notes being converted to be paid in cash by Holder, in lieu of issuing Membership Units to Holder; provided that if a One-for-One Event has occurred, Obligor shall pay cash to the Holder in an amount based on the fair market value of a Membership Unit.

#### Section 6.02. Conversion.

If this Mirror Note, or a portion thereof, is converted during any Record Date Period, Holder shall pay Obligor cash in an amount equal to the interest payable on the related Mirror Interest Payment Date on the principal amount of this Mirror Note being converted, provided that no such payment needs to be made if this Mirror Note or any portion thereof has been called for redemption on a Mirror Redemption Date that is during that Record Date Period or is subject to repurchase on a Mirror Fundamental Change Repurchase Date occurring during that Record Date Period or unless any overdue interest exists at the time of conversion with respect to this Mirror Note (and then only to the extent of such overdue interest). The interest payable on a Mirror Interest Payment Date when this Mirror Note (or portion thereof, if applicable) is converted during the Record Date Period shall be paid to Holder as of the related Regular Record Date in an amount equal to the interest that would have been payable on the portion of this Mirror Note so converted if such amount had been converted as of the close of business on such Mirror Interest Payment Date. Except as provided in this paragraph, no cash payment or adjustment shall be made upon any conversion on account of any interest accrued from the Mirror Interest Payment Date next preceding the conversion date, in respect of any portion of this Mirror Note converted, or on account of any dividends on the Membership Units issued upon conversion. Obligor's delivery to Holder of the number of Membership Units into which any portion of this Mirror Note is convertible will be deemed to satisfy Obligor's obligation to pay such portion of the principal amount of this Mirror Note.

If any CCI notes are exchanged pursuant to Section 10.06 of the Indenture, appropriate adjustments shall be made to the provisions of this Article 6 as reasonably agreed by Holder and Obligor.

---



The portion of the Principal Amount of this Mirror Note converted pursuant to this Article 6 shall be deemed to have been converted immediately prior to the close of business on the day of surrender of the CCI Notes that triggered the conversion of such portion of this Mirror Note in accordance with the foregoing provisions. At such time, the rights of Holder with respect to that portion of this Mirror Note that converted into Membership Units shall cease and Holder shall be treated for all purposes as the record holder or holders of such Membership Units at such time.

This Mirror Note may be converted in part, but only if the principal amount to be converted is any integral multiple of U.S. \$1,000 and the principal amount of this Mirror Note to remain outstanding after such conversion is equal to U.S. \$1,000 or any integral multiple of \$1,000 in excess thereof.

#### Section 6.03. Fractions of Membership Units.

No fractional Membership Units shall be issued upon conversion of all or a portion of this Mirror Note. Instead of any fractional Membership Unit which would otherwise be issuable upon conversion of all or any portion of this Mirror Note, Obligor shall calculate and pay a cash adjustment in respect of such fraction (calculated to the nearest 1/100th of a Membership Unit) in an amount equal to the same fraction of the Sale Price at the close of business on the day of conversion (or round up the number of Membership Units issuable upon conversion of any portion of this Mirror Note to the nearest whole Membership Unit if Holder is rounding up to the nearest whole number of shares under Section 6.03 of the Indenture); provided that if a One-for-One Event has occurred, Obligor shall deliver to Holder cash in the amount determined by multiplying the fair market value of a Membership Unit by the fraction and rounding the result to the nearest whole cent.

#### Section 6.04. Adjustment of Conversion Rate.

(a) The Mirror Conversion Rate shall be automatically adjusted upon each adjustment of the Conversion Rate under the Indenture, by applying the applicable formula for adjustment of the Conversion Rate to the Mirror Conversion Rate, so as to increase or decrease the Mirror Conversion Rate by a number of Membership Units equal to the number of shares of Common Stock by which the Conversion Rate is increased or decreased under the Indenture.

(b) Notwithstanding any other provision of this Section 6, if (i) any of Clause (b) of Article Third and Clauses (a)(ii) and (b)(iii) of Article Fourth of CCI's Restated Certificate of Incorporation as in effect on the date hereof or Sections 3.5.4, 3.6.1, 3.6.4(b), 3.6.4(c), and 5.1.7 of the Amended and Restated Limited Liability Company Agreement of Obligor as in effect on the date hereof has been amended so as to substantively modify the provisions thereof, or (ii) CCI or Obligor is not in substantial compliance with the provisions described in clause (i) (each of the events described in clauses (i) and (ii) above, a "One-for-One Event"), the Mirror Conversion Rate shall not

---

be adjusted pursuant to the Indenture and instead shall be adjusted upon the occurrence of certain events affecting Holder's economic interest in Obligor receivable upon conversion of the Mirror Note, including but not limited to subdivisions or combinations of, or distributions of securities on the Membership Units, to the extent necessary to reflect the economic interest Holder would have had in Obligor if this Mirror Note had been converted prior to the occurrence of a One-for-One Event. In the event a One-for-One Event occurs, the Mirror Conversion Rate shall be reasonably adjusted such that upon conversion of this Mirror Note, or a portion hereof, Holder shall be entitled to receive the kind and amount of securities (or any successor securities) that Holder would have owned if it had converted this Mirror Note, or such portion hereof, immediately prior to the One-for-One Event and had retained the securities received in such hypothetical conversion until after the event or events requiring any adjustment to the Mirror Conversion Rate.

#### Section 6.05. Obligor to Reserve Membership Units.

Obligor shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Membership Units, for the purpose of effecting the conversion of all or any portion of the principal amount outstanding under this Mirror Note, the full number of Membership Units issuable upon the conversion of the entire principal amount outstanding from time to time under this Mirror Note based upon the then effective Mirror Conversion Rate.

#### Section 6.06. Taxes on Conversions.

Obligor will pay any and all taxes and duties that may be payable in respect of the issue or delivery of Membership Units on conversion of all or any portion of this Mirror Note pursuant hereto.

#### Section 6.07. Representation Regarding Membership Units.

Obligor represents that all Membership Units which may be delivered upon conversion of all or any portion of this Mirror Note, upon such delivery, will have been duly authorized and validly issued and will be fully paid and nonassessable.

### ARTICLE 7

#### REPURCHASE OF AMOUNTS OUTSTANDING UNDER THIS MIRROR NOTE

#### Section 7.01. Mandatory Repurchase.

Upon a repurchase of any CCI Notes by CCI (but not by a third party pursuant to Section 11.02(f) pursuant to Article 11 of the Indenture), Obligor shall repurchase a portion of the Principal Amount of this Mirror Note equal to 100% of the aggregate principal amount of the CCI Notes so repurchased at a price equal to the CCI Repurchase Price, plus interest accrued on this Mirror Note to but excluding the Mirror Repurchase Date (the "Mirror Repurchase Price"); provided, however, that installments of interest on

---

the portion of this Mirror Note whose Stated Maturity is on or prior to the CCI Repurchase Date shall be payable to Holder according to the terms of this Mirror Note. Whenever there is a reference, in any context, to the principal of this Mirror Note as of any time, such reference shall be deemed to include reference to the Mirror Repurchase Price payable in respect of amounts outstanding under this Mirror Note to the extent that such Mirror Repurchase Price is, was or would be so payable at such time, and express mention of the Repurchase Price in any provision of this Mirror Note shall not be construed as excluding the Mirror Repurchase Price in those provisions of this Mirror Note when such express mention is not made.

#### Section 7.02. Mechanics of Repurchase.

(1) On each Mirror Repurchase Date, Obligor shall pay or cause to be paid to Holder the Mirror Repurchase Price of the portion of this Mirror Note to be repurchased in cash, or, if Membership Units are to be issued as provided above, such units shall be issued as promptly after the CCI Repurchase Date as practicable; provided, however, that installments of interest that mature on or prior to the CCI Repurchase Date shall be payable in cash to Holder.

(2) If any portion of this Mirror Note to be repurchased pursuant to this Article 7 shall not be paid on the CCI Repurchase Date, such principal amount shall, until paid, bear interest to the extent permitted by applicable law from the CCI Repurchase Date at the rate specified in Section 2.02 hereof and such unpaid portion shall remain convertible into Membership Units until such portion shall have been paid or duly provided for.

(3) Any issuance of Membership Units in respect of the Mirror Repurchase Price shall be deemed to have been effected immediately prior to the close of business on the CCI Repurchase Date and Holder shall be deemed to have become on the CCI Repurchase Date the holder of record of such Membership Units.

(4) For purposes of this Section 7, the current market price of a share of Common Stock is the Closing Price Per Share of the Common Stock on the Trading Day immediately preceding the CCI Repurchase Date.

The provisions of this Article 7 above that require the Obligor to repurchase all or a portion of this Mirror Note shall be applicable regardless of whether or not any other provisions in this Mirror Note are applicable.

### ARTICLE 8

#### MISCELLANEOUS

##### Section 8.01. Notices.

Any notice or communication by Obligor or Holder to the other is duly given if in writing and delivered in Person to the other's address:

---

If to Obligor or Holder:

c/o Charter Communications, Inc.  
12405 Powerscourt Drive  
St. Louis, Missouri 63131  
Facsimile: (314) 965-8793  
Attention: Corporate Secretary

Obligor or Holder, by notice to the other, may designate additional or different addresses for subsequent notices or communications. All notices and communications shall be deemed to have been duly given at the time delivered by hand.

Section 8.02. No Personal Liability of Directors, Officers, Employees, Members and Equity Holders.

No director, officer, employee, incorporator, member or equity holder of Obligor, as such, shall have any liability for any obligations of Obligor under this Mirror Note or for any claim based on, in respect of, or by reason of, such obligations or their creation. Holder by accepting this Mirror Note waives and releases all such liability. This waiver and release are part of the consideration for issuance of this Mirror Note.

Section 8.03. Governing Law.

THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS MIRROR NOTE WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY. EACH OF THE PARTIES HERETO AGREES TO SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MIRROR NOTE.

Section 8.04. No Adverse Interpretation of Other Agreements.

This Mirror Note may not be used to interpret any other indenture, loan or debt agreement of Holder, Obligor or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Mirror Note.

Section 8.05. Successors and Assigns.

All agreements of Obligor in this Mirror Note shall bind its successors and assigns and inure to the benefit of Holder.

Section 8.06. Severability.

---

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

Section 8.07. Headings, Sections, etc.

The Headings of the Articles and Sections of this Mirror Note have been inserted for convenience of reference only, are not to be considered a part of this Mirror Note and shall in no way modify or restrict any of the terms or provisions.

[Remainder of page intentionally left blank.]

---

IN WITNESS WHEREOF, the undersigned has caused this Mirror Note to be duly executed as of the day and year first above written.

CHARTER COMMUNICATIONS HOLDING COMPANY, LLC

By: Charter Communications, Inc., as manager

By:     /s/ Thomas M. Degnan    

Name: Thomas M. Degnan

Title: Vice President – Finance and Corporate

Treasurer