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

FORM 8-K

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

Date of Report (Date of earliest event reported): May 4, 2009 (April 30, 2009)

Newcastle Investment Corp.
(Exact name of registrant as specified in its charter)

Maryland	**001-31458**	**81-0559116**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

1345 Avenue of the Americas, 46th Floor New York, New York	**10105**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(212) 798-6100**

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 a Material Definitive Agreement.

On April 30, 2009, Newcastle Investment Corp. (the "Company") entered into an Exchange Agreement (the "Exchange Agreement") with several collateralized debt obligations managed by Taberna Capital Management, LLC (together "Taberna"), pursuant to which the Company agreed to exchange newly issued junior subordinated notes due 2035 in an initial aggregate principal amount of $101.7 million (the "Notes") for $100 million in aggregate liquidation amount of trust preferred securities that were previously issued by a subsidiary of the Company (the "TRUPs") and were owned by Taberna. As discussed in more detail below, the Notes will accrue interest at a rate of 1.0% per year for a specified Modification Period (defined below), which is lower than the interest rate that the Company was required to pay on the TRUPs (7.54%). In conjunction with the exchange, the TRUPs were cancelled.

The Notes were issued pursuant to the Junior Subordinated Indenture, dated April 30, 2009, between the Company and The Bank of New York Mellon Trust Company, National Association ("BNYM"), as trustee (the "Indenture").

The Notes will increase in aggregate principal amount from $101.7 million to $104.9 million during a specified period (the "Modification Period") according to the following schedule:

Date	Aggregate Principal Amount of Notes
4/30/09	$ 101,700,000
10/30/09	$ 102,500,000
1/30/10	$ 103,300,000
4/30/10	$ 104,100,000
7/30/10	$ 104,900,000

The Modification Period will end on July 30, 2010 or such earlier date as the Company may elect at any time and in its sole discretion. If the Company does elect to terminate the Modification Period, the aggregate principal amount outstanding will be fixed through maturity at the amount in effect as of the termination date. During the Modification Period, the Company will pay interest at a rate of 1.0% annually on the aggregate principal amounts described above. At the end of the Modification Period, the Company will pay interest on the aggregate principal amounts described above at a fixed rate of 7.574% annually through April 2016, and thereafter the Company will pay a variable rate equal to LIBOR plus 2.25% annually. During the Modification Period the Company will be subject to certain restrictions, including limitations on its ability to pay dividends on shares of its common stock or preferred stock, subject to REIT dividend requirements. The Indenture contains customary events of default, including nonpayment of principal or interest when due, defaults based on events of bankruptcy and insolvency, and cross-default provisions to the Pledge Agreements (as defined below).

Concurrently with its entry in to the Exchange Agreement, the Company entered into the Pledge and Security Agreement with BNYM, as trustee under the Indenture, and the Pledge, Security Agreement and Account Control Agreement with NIC TP LLC **,** as pledgor, and BNYM, as bank and as trustee under the Indenture (together, the "Pledge Agreements"), whereby the Company granted in favor of BNYM 100% of the Company's equity interests in NIC TP LLC, the special purpose subsidiary that holds the Company's participation in a loan and related deposit account. The pledged collateral will be released at the end of the Modification Period.

The foregoing summary does not describe all of the terms contained in the aforementioned agreements and is qualified in its entirety by reference to the full text of the Exchange Agreement, the Indenture and the Pledge Agreements, which are filed as Exhibits 10.1, 4.1, 4.2 and 4.3 hereto, respectively, and are incorporated by reference herein.

Item 2.03 Creation of a Direct Financial Obligation.

The information provided with respect to the Notes and the Pledge Agreements in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits.

(d) *Exhibits.*

4.1	Junior Subordinated Indenture between Newcastle Investment Corp. and The Bank of New York Mellon Trust Company, National Association, dated April 30, 2009.
4.2	Pledge and Security Agreement between Newcastle Investment Corp. and The Bank of New York Mellon Trust Company, National Association, as trustee, dated April 30, 2009.
4.3	Pledge, Security Agreement and Account Control Agreement among Newcastle Investment Corp., NIC TP LLC, as pledgor, and The Bank of New York Mellon Trust Company, National Association, as bank and trustee, dated April 30, 2009.
10.1	Exchange Agreement between Newcastle Investment Corp. and Taberna Preferred Funding IV, Ltd., Taberna Preferred Funding V, Ltd., Taberna Preferred Funding VI, Ltd. and Taberna Preferred Funding VII, Ltd., dated April 30, 2009.

SIGNATURES

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

Newcastle Investment Corp.
(Registrant)

Date: May 4, 2009

By: /s/ Brian C. Sigman
Name: Brian C. Sigman
Title: Chief Financial Officer

EXHIBIT INDEX

Exhibit No.	Description
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Exhibit 4.1

JUNIOR SUBORDINATED INDENTURE

between

NEWCASTLE INVESTMENT CORP.

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION,
as *Trustee*

Dated as of April 30, 2009

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Junior Subordinated Indenture, dated as of April 30, 2009, between NEWCASTLE INVESTMENT CORP., a Maryland corporation (the "*Company*"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, as Trustee (in such capacity, the "*Trustee*").

Recitals of the Company

Whereas, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of its junior subordinated notes and to provide the terms and conditions upon which the Securities are to be authenticated, issued and delivered; and

Whereas, all things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

Now, Therefore, this Indenture Witnesseth:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE I

Definitions and Other Provisions of General Application

SECTION 1.1. *Definitions.*

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

(a) the terms defined in this Article I have the meanings assigned to them in this Article I;

(b) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";

(c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;

(d) unless the context otherwise requires, any reference to an "Article" or a "Section" refers to an Article or a Section, as the case may be, of this Indenture;

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

(f) a reference to the singular includes the plural and vice versa; and

(g) the masculine, feminine or neuter genders used herein shall include the masculine, feminine and neuter genders.

"Act" when used with respect to any Holder, has the meaning specified in Section 1.4.

"Account" shall mean that certain reserve account with Trustee into which Pledged Collateral consisting of cash shall be deposited, as more fully described in the Pledge, Security Agreement and Account Control Agreement.

"Additional Interest" means the interest, if any, that shall accrue on any amounts payable on the Securities, the payment of which has not been made on the applicable Interest Payment Date and which shall accrue at the rate per annum specified or determined as specified in such Security, in each case to the extent legally enforceable.

"Administration Action" has the meaning specified in the definition of Tax Event.

"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.

"Allocation Percentage" means the principal amount of Securities represented by a Note as a percentage of the aggregate principal amount of all outstanding Securities issued under this Indenture. The Allocation Percentage may be increased to reflect Securities cancelled, redeemed or otherwise retired in any manner permitted under the terms of this Indenture or reduced to reflect additional Securities issued in any manner permitted under the terms of this Indenture.

"Applicable Depositary Procedures" means, with respect to any transfer or transaction involving a Global Security or beneficial interest therein, the rules and procedures of the Depositary for such Security, in each case to the extent applicable to such transaction and as in effect from time to time.

"Authenticating Agent" means any Person authorized by the Trustee pursuant to Section 6.11 to act on behalf of the Trustee to authenticate the Securities.

"Board of Directors" means the board of directors of the Company or any duly authorized committee of that board.

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

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

"Calculation Agent" has the meaning specified in Section 10.4.

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

"Commission" has the meaning specified in Section 7.3(c).

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

"Company Request" and *"Company Order"* mean, respectively, the written request or order signed in the name of the Company by an authorized officer of the Company and delivered to the Trustee, pursuant to a Board Resolution.

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

"Corporate Trust Office" means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of this Indenture is located at 601 Travis Street, 16th Floor, Houston, Texas 77019, Attn: Global Corporate Trust- Newcastle Investment Corp. Initially, all notices and correspondence shall be addressed to Mudassir Mohamed, telephone number (713) 483-6029.

"Debt" means, with respect to any Person, whether recourse is to all or a portion of the assets of such Person, whether currently existing or hereafter incurred and whether or not contingent and without duplication, (i) every obligation of such Person for money borrowed; (ii) every obligation of such Person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses; (iii) every reimbursement obligation of such Person with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of such Person; (iv) every obligation of such Person issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or other accrued liabilities arising in the ordinary course of business); (v) every capital lease obligation of such Person; (vi) all indebtedness of such Person, whether incurred on or prior to the date of this Indenture or thereafter incurred, for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity forward contracts, options and swaps and similar arrangements; (vii) every obligation of the type referred to in clauses (i) through (vi) of another Person and all dividends of another Person the payment of which, in either case, such Person has guaranteed or is responsible or liable for, directly or indirectly, as obligor or otherwise; and (viii) any renewals, extensions, refundings, amendments or modifications of any obligation of the type referred to in clauses (i) through (vii).

"Defaulted Interest" has the meaning specified in Section 3.1.

"Depositary" means an organization registered as a clearing agency under the Exchange Act that is designated as Depositary by the Company or any successor thereto.

"Depositary Participant" means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Depositary effects book-entry transfers and pledges of securities deposited with the Depositary.

"Dollar" or *"$"* means the currency of the United States of America that, as at the time of payment, is legal tender for the payment of public and private debts.

"EDGAR" has the meaning specified in Section 7.3(c).

"Equity Interests" means with respect to any person (a) if such Person is a partnership, the partnership interests (general or limited) in a partnership, (b) if such Person is a limited liability company, the membership interests in a limited liability company and (c) if such Person is a corporation, the shares or stock interests (both common stock and preferred stock) in a corporation.

"Event of Default" has the meaning specified in Section 5.1.

"Exchange Act" means the Securities Exchange Act of 1934 or any statute successor thereto, in each case as amended from time to time.

"*Exchange Agreement*" means that certain Exchange Agreement executed and delivered contemporaneously with this Indenture by and among the Company and the parties named therein.

"Expiration Date" has the meaning specified in Section 1.4(h).

"Financing Entity" has the meaning specified in the definition of Senior Debt.

"*Fixed Rate*" means a fixed rate equal to (a) for the Interest Period commencing on April 30, 2009 and for each Interest Period thereafter through and including the Interest Period immediately preceding the Interest Period during which the Modification Period Termination Date occurs, a fixed rate equal to one percent (1%) per annum; and (b) for the Interest Period commencing on the earlier of (i) July 30, 2010 and (ii) the first day of the Interest Period during which such Modification Period Termination Date occurs, and for each consecutive Interest Period thereafter through and including April 29, 2016, a fixed rate equal to seven and five hundred seventy-four one thousandths percent (7.574%) per annum.

"Fixed Rate Period" has the meaning set forth in Section 2.1.

"GAAP" means United States generally accepted accounting principles, consistently applied, from time to time in effect.

"Global Security" means a Security that evidences all or part of the Securities, the ownership and transfers of which shall be made through book entries by a Depositary.

"Government Obligation" means (a) any security that is (i) a direct obligation of the United States of America of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (b) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any Government Obligation that is specified in clause (a) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any Government Obligation that is so specified and held, provided, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

"Holder" means a Person in whose name a Security is registered in the Securities Register.

"Indenture" means this instrument as originally executed or as it may from time to time be amended or supplemented by one or more amendments or indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

"Indenture Documents" means this Indenture, the Securities, the Pledge and Security Agreement and the Pledge, Security Agreement and Account Control Agreement, as such documents may be modified, amended, supplemented, restated or replaced from time to time.

"Interest Payment Date" means January 30, April 30, July 30 and October 30 of each year, commencing on July 30, 2009 during the term of this Indenture.

"*Interest Period*" means the period commencing on, and including, an Interest Payment Date and continuing through and including the day prior to the next succeeding Interest Payment Date. The period from April 30, 2009 through July 29, 2009 shall be considered to be an Interest Period notwithstanding the fact that April 30, 2009 is not an Interest Payment Date.

"Investment Company Act" means the Investment Company Act of 1940 or any successor statute thereto, in each case as amended from time to time.

"LIBOR" has the meaning specified in Schedule A.

"LIBOR Business Day" has the meaning specified in Schedule A.

"LIBOR Determination Date" has the meaning specified in Schedule A.

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

"Mezzanine Loan" has the meaning specified in the definition of Participation Interest.

"Modification Period" means the period commencing as of April 30, 2009 and continuing through, and including, July 29, 2010, unless otherwise terminated in accordance with Section 3.1(g) in which case the Modification Period shall terminate on the Modification Period Termination Date.

"Modification Period Termination Date" means the earlier of (a) July 29, 2010 and (b) a date prior to July 29, 2010 selected by the Company in accordance with the terms of Section 3.1(g).

"Notice of Default" means a written notice of the kind specified in Section 5.1(c).

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

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for or an employee of the Company or any Affiliate of the Company.

"Optional Redemption Price" has the meaning set forth in Section 11.1.

"Original Issue Date" means the date of original issuance of each Security.

"*Other Taxes*" has the meaning set forth in Section 3.11(c).

"Outstanding" means, when used in reference to any Securities, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent in trust for the Holders of such Securities; provided, that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities that have been paid or in substitution for or in lieu of which other Securities have been authenticated and delivered pursuant to the provisions of this Indenture, unless proof satisfactory to the Trustee is presented that any such Securities are held by Holders in whose hands such Securities are valid, binding and legal obligations of the Company;

provided, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, any Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding unless the Company shall hold all Outstanding Securities, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

"Paying Agent" means the Trustee or any Person (other than the Company or any Affiliate of the Company) authorized by the Trustee to pay the principal of or any premium or interest on, or other amounts in respect of, any Securities on behalf of the Company.

"Participation Agreement" means that certain Participation Agreement, dated as of February 7, 2005, by and among Fortress Credit Corp., as the Initial Noteholder, Drawbridge Special Opportunities Fund LP, Dune Capital Funding V, LLC, Blackacre Institutional Capital Management, LLC, the Company, German American Capital Corporation and PCRL Investments L.P., as the Initial Participants, as the same may be modified, amended, restated or supplemented from time to time.

"Participation Interest" means that certain A-4 Participation Interest in the amount of $23,125,000 in that certain Mezzanine Loan (the "*Mezzanine Loan*") in the maximum principal amount of $130,000,000 made by Fortress Credit Corp. as of February 7, 2005 to 401 Mezz Venture LLC, a Delaware limited liability company, the owner of one hundred percent (100%) of the ownership interest in 401 North Wabash Venture LLC, a Delaware limited liability company, the owner of certain property known as the Trump International Chicago Hotel and Tower (the "*Trump Property*").

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, company, limited liability company, trust, unincorporated association, or government, or any agency or political subdivision thereof, or any other entity of whatever nature.

"Place of Payment" means, with respect to the Securities, the Corporate Trust Office of the Trustee.

"Pledge and Security Agreement" shall mean that certain Pledge and Security Agreement dated as of April 30, 2009 from the Company in favor of the Trustee on behalf of the Holders, wherein the Company has pledged and granted a security interest in certain Collateral as described therein.

"Pledge, Security Agreement and Account Control Agreement" shall mean that certain Pledge, Security Agreement and Account Control Agreement dated as of April 30, 2009 from the Pledged Entity in favor of the Trustee on behalf of the Holders and acknowledged and agreed by the Company.

"Pledged Collateral" means, collectively (a) all Collateral, as defined in the Pledge, Security Agreement and Account Control Agreement, and (b) all Collateral, as defined in the Pledge and Security Agreement.

"Pledged Entity" means NIC TP LLC, a Delaware limited liability, that is wholly owned and Controlled by the Company (subject to any rights vested in the Trustee created by the Indenture Documents).

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security. For the purposes of this definition, any security authenticated and delivered under Section 3.6 in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"Principal Sum" means the aggregate principal amount of all Securities, which shall increase automatically and shall be equal to: (a) $101,700,000, for the period commencing on April 30, 2009 and continuing through and including October 29, 2009; (b) $102,500,000, for the period commencing on October 30, 2009 and continuing through and including January 29, 2010; (c) $103,300,000 for the period commencing on January 30, 2010 and continuing through and including April 29, 2010; (d) $104,100,000, for the period commencing on April 30, 2010 and continuing through and including July 29, 2010; and (e) thereafter, $104,900,000; provided, however, that if and at such time as the Modification Period Termination Date has occurred, the Principal Sum shall be fixed at an amount equal to the then current amount of the Principal Sum in effect as of such Modification Period Termination Date. The Principal Sum may also be reduced in another manner permitted under the terms of this Indenture. The Principal Sum may be allocated to separate Securities to be issued hereunder and, in such instance, all amounts due and payable hereunder and under the Indenture Documents shall be allocated to the applicable Holders of the Securities on a pro rata basis, based upon the applicable allocated amount of their respective Securities.

"Proceeding" has the meaning specified in Section 12.2(b).

"Release of Collateral" has the meaning specified in Section 10.5(c).

"Release Notice" has the meaning set forth in Section 10.5(c).

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

"Redemption Price" means, when used with respect to any Security to be redeemed, in whole or in part, the Tax Redemption Price or the Optional Redemption Price, as applicable, at which such Security or portion thereof is to be redeemed as fixed by or pursuant to this Indenture.

"Reference Banks" has the meaning specified in Schedule A.

"Regular Record Date" for the interest payable on any Interest Payment Date with respect to the Securities means the date that is fifteen (15) days preceding such Interest Payment Date (whether or not a Business Day).

"Responsible Officer" means, when used with respect to the Trustee, the officer in the Worldwide Securities Services department of the Trustee having direct responsibility for the administration of this Indenture.

"Rights Plan" means a plan of the Company providing for the issuance by the Company to all holders of its Equity Interests of rights entitling the holders thereof to subscribe for or purchase Equity Interests or any class or series of Equity Interests in the Company which rights (i) are deemed to be transferred with such Equity Interests and (ii) are also issued in respect of future issuances of such Equity Interests, in each case until the occurrence of a specified event or events.

"Securities" or *"Security"* means any debt securities or debt security, as the case may be, authenticated and delivered under this Indenture.

"Securities Act" means the Securities Act of 1933 or any successor statute thereto, in each case as amended from time to time.

"Securities Register" and *"Securities Registrar"* have the respective meanings specified in Section 3.5.

"Senior Debt" means the principal of and any premium and interest on (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company, whether or not such claim for post-petition interest is allowed in such proceeding) all Debt of the Company, whether incurred on or prior to the date of this Indenture or thereafter incurred, unless it is provided in the instrument creating or evidencing the same or pursuant to which the same is outstanding, that such obligations are not superior in right of payment to the Securities issued under this Indenture; *provided*, that Senior Debt shall not be deemed to include any (i) debt or (ii) other debt securities (and guarantees, if any, in respect of such debt securities) issued to any trust (or a trustee of any such trust), partnership or other entity affiliated with the Company that is a financing vehicle of the Company (a "Financing Entity") in connection with the issuance by such Financing Entity of equity securities or other securities, in each case of (i) or (ii) pursuant to an instrument that ranks *pari passu* with or junior in right of payment to this Indenture.

"*SCA*" has the meaning specified in Section 1.14.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.1.

"Stated Maturity" means April 30, 2035.

"Subsidiary" of a Person means (a) any corporation more than fifty percent (50%) of the outstanding securities having ordinary voting power of which shall at the time be owned or Controlled, directly or indirectly, by such Person and/or by one or more of its Subsidiaries or (b) any partnership, limited liability company, association, joint venture or similar business organization more than fifty percent (50%) of the ownership interests having ordinary voting power of which shall at the time be owned or Controlled, directly or indirectly, by such Person and/or by one or more of its Subsidiaries. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a Subsidiary of the Company.

"Taberna Capital Management, LLC" means Taberna Capital Management, LLC and its successors and/or assigns as collateral manager of the Holders, as applicable.

"Tax Event" means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of (a) any amendment to or change (including any announced prospective change) in the laws or any regulations thereunder of the United States or any political subdivision or taxing authority thereof or therein or (b) any judicial decision or any official administrative pronouncement (including any private letter ruling, technical advice memorandum or field service advice) or regulatory procedure, including any notice or announcement of intent to adopt any such pronouncement or procedure (an "*Administrative Action*"), regardless of whether such judicial decision or Administrative Action is issued to or in connection with a proceeding involving the Company or the Trust and whether or not subject to review or appeal, which amendment, change, judicial decision or Administrative Action is enacted, promulgated or announced, in each case, on or after the date of issuance of the Securities, there is more than an insubstantial risk that interest payable by the Company on the Securities is not, or within ninety (90) days of the date of such opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes.

"Trump Property" has the meaning specified in the definition of Participation Interest.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this instrument, solely in its capacity as such and not in its individual capacity, until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and, thereafter, "Trustee" shall mean or include each Person who is then a Trustee hereunder.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended and as in effect on the date as of this Indenture.

"Trustee Direction" has the meaning specified in Section 10.5(d).

SECTION 1.2. *Compliance Certificate and Opinions.*

(a) Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officers' Certificate stating that all conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, have been complied with.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificate provided pursuant to Section 10.3) shall include:

(i) a statement by each individual signing such certificate or opinion that such individual has read such covenant or condition and the definitions herein relating thereto;

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

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

(iv) a statement as to whether, in the opinion of such individual, such condition or covenant has been complied with.

SECTION 1.3. *Forms of Documents Delivered to Trustee.*

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

(b) Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to matters upon which his or her certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to such matters are erroneous.

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

(d) Whenever, subsequent to the receipt by the Trustee of any Board Resolution, Officers' Certificate, Opinion of Counsel or other document or instrument, a clerical, typographical or other inadvertent or unintentional error or omission shall be discovered therein, a new document or instrument may be substituted therefor in corrected form with the same force and effect as if originally received in the corrected form and, irrespective of the date or dates of the actual execution and/or delivery thereof, such substitute document or instrument shall be deemed to have been executed and/or delivered as of the date or dates required with respect to the document or instrument for which it is substituted. Without limiting the generality of the foregoing, any Securities issued under the authority of such defective document or instrument shall nevertheless be the valid obligations of the Company entitled to the benefits of this Indenture equally and ratably with all other Outstanding Securities.

SECTION 1.4. *Acts of Holders.*

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given to or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent thereof duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments (including any appointment of an agent) is or are delivered to the Trustee, and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.4.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him or her the execution thereof. Where such execution is by a Person acting in other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority. The fact and date of the execution by any Person of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine.

(c) The ownership of Securities shall be proved by the Securities Register.

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

(e) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

(f) Except as set forth in paragraph (g) of this Section 1.4, the Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; provided, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date (as defined in Section 1.4(h)) by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities in the manner set forth in Section 1.6.

(g) The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration or rescission or annulment thereof referred to in Section 5.2, (iii) any request to institute proceedings referred to in Section 5.7(b) or (iv) any direction referred to in Section 5.12. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; *provided*, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of Securities in the manner set forth in Section 1.6.

(h) With respect to any record date set pursuant to paragraph (f) or (g) of this Section 1.4, the party hereto that sets such record date may designate any day as the "*Expiration Date*" and from time to time may change the Expiration Date to any earlier or later day; provided, that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Securities in the manner set forth in Section 1.6, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section 1.4, the party hereto that set such record date shall be deemed to have initially designated the ninetieth (90th) day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the one hundred eightieth (180th) day after the applicable record date.

SECTION 1.5. *Notices, Etc. to Trustee and Company.*

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

(i) the Trustee by any Holder, or the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with and received by the Trustee at its Corporate Trust Office, or

(ii) the Company by the Trustee, or any Holder shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, to the Company addressed to it at 1345 Avenue of the Americas, New York, NY 10105 or at any other address previously furnished in writing to the Trustee by the Company.

(b) The Trustee may, but is not required to, rely upon and comply with instructions and directions sent by e-mail or facsimile, (or any other reasonable means of communication) by persons believed by the Trustee in good faith to be authorized to provide such instructions or direction; provided, however, that the Trustee may require such additional evidence, confirmation or certification from any such party or parties as the Trustee, in its reasonable discretion, deems necessary or advisable before acting or refraining from acting upon any such instruction or direction.

(c) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that any Person providing such instructions or directions shall provide to the Trustee an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If such Person elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. Each Person providing instructions or directions to the Trustee hereunder agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting, in good faith, on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 1.6. *Notice to Holders; Waiver.*

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first class, postage prepaid, to each Holder affected by such event to the address of such Holder as it appears in the Securities Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. If, by reason of the suspension of or irregularities in regular mail service or for any other reason, it shall be impossible or impracticable to mail notice of any event to Holders when said notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 1.7. *Effect of Headings and Table of Contents.*

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction of this Indenture.

SECTION 1.8. *Successors and Assigns.*

This Indenture shall be binding upon and shall inure to the benefit of any successor to the Company and the Trustee, including any successor by operation of law. Except in connection with a transaction involving the Company that is permitted under Article VIII and pursuant to which the assignee agrees in writing to perform the Company's obligations hereunder, the Company shall not assign its obligations hereunder.

SECTION 1.9. *Separability Clause.*

If any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

SECTION 1.10. *Benefits of Indenture.*

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

SECTION 1.11. *Governing Law.*

This Indenture and the rights and obligations of each of the Holders, the Company and the Trustee shall be construed and enforced in accordance with and governed by the laws of the State of New York without reference to its conflict of laws provisions (other than section 5-1401 of the General Obligations Law).

SECTION 1.12. *Submission to Jurisdiction.*

ANY LEGAL ACTION OR PROCEEDING BY OR AGAINST ANY PARTY HERETO OR WITH RESPECT TO OR ARISING OUT OF THIS INDENTURE MAY BE BROUGHT IN OR REMOVED TO THE COURTS OF THE STATE OF NEW YORK, IN AND FOR THE COUNTY OF NEW YORK, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK (IN EACH CASE SITTING IN THE BOROUGH OF MANHATTAN). BY EXECUTION AND DELIVERY OF THIS INDENTURE, EACH PARTY ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS INDENTURE.

SECTION 1.13. *Non-Business Days.*

If any Interest Payment Date, Redemption Date or Stated Maturity of any Security shall not be a Business Day, then (notwithstanding any other provision of this Indenture or the Securities) payment of interest, premium, if any, or principal or other amounts in respect of such Security shall not be made on such date, but shall be made on the next succeeding Business Day (and no interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, until such next succeeding Business Day) except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the Interest Payment Date or Redemption Date or at the Stated Maturity.

SECTION 1.14. *Shareholder Communications Act*

(a) With respect to securities under and as defined in the Shareholders Communications Act of 1985 (the “SCA”) issued in the United States, the SCA requires the Trustee to disclose to the issuers, upon their request, the name, address and securities position of its customers who are (i) the “beneficial owners” (as defined in the SCA) of the issuer’s securities, if the beneficial owner does not object to such disclosure, or (ii) acting as a “respondent bank” (as defined in the SCA) with respect to the securities. (Under the SCA, “respondent banks” do not have the option of objecting to such disclosure upon the issuers’ request.) The SCA defines a “beneficial owner” as any person who has, or shares, the power to vote a security (pursuant to an agreement or otherwise), or who directs the voting of a security. The SCA defines a “respondent bank” as any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with a bank, such as Trustee. Under the SCA, each Holder is either the “beneficial owner” or a “respondent bank.”

(b) For Purposes of this Indenture, until Trustee receives a contrary written instruction from a Holder, Trustee shall assume that such Holder is the beneficial owner of the Securities.

(c) For purposes of this Indenture, until Trustee receives a contrary instruction from a Holder, Trustee shall release the name, address and securities position to the Company, if the Company requests such information pursuant to the SCA for the specific purpose of direct communications between the Company and such Holder. With respect to securities issued outside of the United States, if applicable, information shall be released to issuers only if required by law or regulation of the particular country in which the securities are located.

ARTICLE II

Security Forms

SECTION 2.1. *Form of Security.*

Any Security issued hereunder shall be in substantially the following form:

NEWCASTLE INVESTMENT CORP.
Junior Subordinated Note due 2035

No. ___________ $[___________]

Newcastle Investment Corp., a corporation organized and existing under the laws of Maryland (hereinafter called the "*Company*," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to ______________________, or registered assigns, the principal sum of [___________ Dollars ($___________]) on April 30, 2035 or such other Principal Sum as may be applicable as provided below. At issuance the Allocation Percentage applicable to this Note is ___________%. Holders of Securities shall only be entitled to receive payments due hereunder based on the applicable Allocation Percentage.

The Principal Sum shall be automatically increased as follows: (a) during the period commencing on April 30, 2009 and continuing through and including October 29, 2009, the Principal Sum shall be fixed at One Hundred One Million Seven Hundred Thousand Dollars ($101,700,000); (b) during the period commencing on October 30, 2009 and continuing through and including January 29, 2010, the Principal Sum shall be fixed at One Hundred Two Million Five Hundred Thousand Dollars ($102,500,000); (c) during the period commencing on January 30, 2010 and continuing through and including April 29, 2010, the Principal Sum shall be fixed at One Hundred Three Million Three Hundred Thousand Dollars ($103,300,000) (d) during the period commencing on April 30, 2010 and continuing through and including July 29, 2010, the Principal Sum shall be fixed at One Hundred Four Million One Hundred Thousand Dollars ($104,100,000) and (d) thereafter, the Principal Sum shall be fixed at One Hundred Four Million Nine Hundred Thousand Dollars ($104,900,000), *provided, however,* at such time as the Modification Period Termination Date has occurred, the Principal Sum shall be set at an amount equal to the then current amount of the Principal Sum in effect as of such Modification Period Termination Date and shall only be subject to increases and decreases of principal as otherwise provided in the Indenture. All increases in the Principal Sum shall be automatic and shall not require the reissuance or execution of such Note by the Company or any authentication of such Note by the Trustee.

The Company further promises to pay interest on the Allocation Percentage of the then applicable Principal Sum from April 30, 2009, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, quarterly in arrears on January 30, April 30, July 30 and October 30 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (and no interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date until such next succeeding Business Day), except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case, with the same force and effect as if made on the Interest Payment Date, at a fixed rate equal to applicable Fixed Rate per annum through the Interest Payment Date in April, 2016 ("Fixed Rate Period") and thereafter at a variable rate equal to LIBOR plus 2.25% per annum, until the principal hereof is paid or duly provided for or made available for payment; *provided, further*, that any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at a fixed rate equal to the applicable Fixed Rate accruing such period through the Interest Payment Date in April, 2016 and thereafter at a variable rate equal to LIBOR plus 2.25% per annum (to the extent that the payment of such interest shall be legally enforceable), compounded quarterly, from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand.

During the Fixed Rate Period, the amount of interest payable shall be computed on the basis of a 360-day year of twelve 30-day months and the amount payable for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any Interest Period will be computed on the basis of a 360-day year and the actual number of days elapsed in the relevant Interest Period. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities not less than ten (10) days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

Payment of principal of, premium, if any, and interest on this Security shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of this Security shall be made at the Place of Payment upon surrender of such Securities to the Paying Agent, and payments of interest shall be made, subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Debt, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his or her behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each Holder hereof, by his or her acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Debt, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

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

[FORM OF REVERSE OF SECURITY]

This Security is one of a duly authorized issue of securities of the Company (the "*Securities*") issued under the Junior Subordinated Indenture, dated as of April 30, 2009 (the "*Indenture*"), between the Company and The Bank of New York Mellon Trust Company, National Association, as Trustee (in such capacity, the " *Trustee*," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Senior Debt and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered.

All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

The Company may, on any Interest Payment Date, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee) on or after April 30, 2011 and subject to the terms and conditions of Article XI of the Indenture, redeem this Security in whole at any time or in part from time to time at a Redemption Price equal to one hundred percent (100%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date.

In addition, upon the occurrence and during the continuation of a Tax Event, the Company may, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee), redeem this Security, in whole but not in part, subject to the terms and conditions of Article XI of the Indenture at a Redemption Price equal to one hundred seven and one half percent (107.5%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof. If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any Security.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Securities, on behalf of the Holders of all Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium, if any, and interest, including any Additional Interest (to the extent legally enforceable), on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is restricted to transfers to "Qualified Purchasers" (as such term is defined in the Investment Company Act of 1940, as amended), and is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar and duly executed by, the Holder hereof or such Holder's attorney duly authorized in writing, and thereupon one or more new Securities, of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form without coupons in minimum denominations of $100,000 and any integral multiple of $1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities are exchangeable for a like aggregate principal amount of Securities and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

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

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

The Company and, by its acceptance of this Security or a beneficial interest herein, the Holder of, and any Person that acquires a beneficial interest in, this Security agree that, for United States federal, state and local tax purposes, it is intended that this Security constitute indebtedness.

This Security shall be construed and enforced in accordance with and governed by the laws of the State of New York, without reference to its conflict of laws provisions (other than section 5-1401 of the General Obligations Law).

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed on this_______________ day of __________, 20 _____.

Newcastle Investment Corp.

By: ____
Name:
Title:

SECTION 2.2. *Restricted Legend.*

(a) Any Security issued hereunder shall bear a legend in substantially the following form:

"[**IF THIS SECURITY IS A GLOBAL SECURITY INSERT:** THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY ("*DTC*") OR A NOMINEE OF DTC. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

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

THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND SUCH SECURITIES, AND ANY INTEREST THEREIN, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF ANY SECURITIES IS HEREBY NOTIFIED THAT THE SELLER OF THE SECURITIES MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A UNDER THE SECURITIES ACT.

THE HOLDER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE AGREES FOR THE BENEFIT OF THE COMPANY THAT SUCH SECURITIES MAY BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED ONLY (A) TO THE COMPANY OR (B) (I) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED PURCHASER" (AS DEFINED IN SECTION 2(a)(51) OF THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED), AND (II) (Z) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (Y) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF SUBPARAGRAPH (a) (1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT THAT IS ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF AN "ACCREDITED INVESTOR," FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, (X) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (W) PURSUANT TO AN EXEMPTION FROM THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND, IN THE CASE OF (Y) OR (W), SUBJECT TO THE RIGHT OF THE COMPANY TO REQUIRE AN OPINION OF COUNSEL AND OTHER INFORMATION REASONABLY SATISFACTORY TO THE COMPANY (PROVIDED THAT IF SUCH OPINION AND INFORMATION STATES THAT THE PROPOSED OFFER, RESALE OR OTHER TRANSFER WILL BE IN ACCORDANCE WITH APPLICABLE SECURITIES LAWS, THE COMPANY MAY NOT OBJECT THERETO). IN ADDITION, EACH HOLDER FURTHER AGREES THAT IT WILL NOTIFY ANY PURCHASER OF ANY SECURITIES FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN THE PRECEDING SENTENCE.

THE SECURITIES WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN BLOCKS HAVING AN AGGREGATE PRINCIPAL AMOUNT OF NOT LESS THAN $100,000. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY ATTEMPTED TRANSFER OF SECURITIES, OR ANY INTEREST THEREIN, IN A BLOCK HAVING AN AGGREGATE PRINCIPAL AMOUNT OF LESS THAN $100,000 AND MULTIPLES OF $1,000 IN EXCESS THEREOF SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH SECURITIES FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PRINCIPAL OF OR INTEREST ON SUCH SECURITIES, OR ANY INTEREST THEREIN, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH SECURITIES.

THE HOLDER OF THIS SECURITY, OR ANY INTEREST THEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF ALSO AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (" *ERISA*"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "*CODE*") (EACH A "*PLAN*"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS SECURITY OR ANY INTEREST THEREIN. ANY PURCHASER OR HOLDER OF THE SECURITIES OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF SECTION 3(3) OF ERISA, OR A PLAN TO WHICH SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF AN EMPLOYEE BENEFIT PLAN OR PLAN, OR ANY OTHER PERSON OR ENTITY USING THE ASSETS OF ANY EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE."

(b) The above legends shall not be removed from any Security unless there is delivered to the Company satisfactory evidence, which may include an Opinion of Counsel, as may be reasonably required to ensure that any future transfers thereof may be made without restriction under or violation of the provisions of the Securities Act and other applicable law. Upon provision of such satisfactory evidence, the Company shall execute and deliver to the Trustee, and the Trustee shall deliver, upon receipt of a Company Order directing it to do so, a Security that does not bear the legend.

SECTION 2.3. *Form of Trustee's Certificate of Authentication.*

The Trustee's certificate of authentication shall be in substantially the following form:

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

Dated:

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION,
not in its individual capacity, but solely as Trustee

By: ______________________________
Authorized Signatory

SECTION 2.4. *Temporary Securities.*

(a) Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

(b) If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for that purpose without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of any authorized denominations having the same Original Issue Date and Stated Maturity and having the same terms as such temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

SECTION 2.5. *Definitive Securities.*

The Securities issued on the Original Issue Date shall be in definitive form. The definitive Securities shall be printed, lithographed or engraved, or produced by any combination of these methods, if required by any securities exchange on which the Securities may be listed, on a steel engraved border or steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

ARTICLE III

The Securities

SECTION 3.1. *Payment of Principal and Interest.*

(a) The unpaid Principal Sum shall bear interest at a fixed rate equal to the applicable Fixed Rate per annum through the Interest Payment Date in April, 2016 and thereafter at a variable rate of LIBOR plus 2.25% per annum until paid or duly provided for, such interest to accrue from the Original Issue Date or from the most recent Interest Payment Date to which interest has been paid or duly provided for, and any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at a fixed rate equal to the applicable Fixed Rate per annum in effect during the period such Additional Interest accrues through the Interest Payment Date in April, 2016 and thereafter at a variable rate of LIBOR plus 2.25% per annum compounded quarterly from the dates such amounts are due until they are paid or funds for the payment thereof are made available for payment.

(b) Interest and Additional Interest on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, except that interest and any Additional Interest payable on the Stated Maturity (or any date of principal repayment upon early maturity) of the principal of a Security or on a Redemption Date shall be paid to the Person to whom principal is paid. The initial payment of interest on any Security that is issued between a Regular Record Date and the related Interest Payment Date shall be payable as provided in such Security.

(c) Any interest on any Security that is due and payable, but is not timely paid or duly provided for, on any Interest Payment Date for Securities (herein called "*Defaulted Interest*") shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in paragraph (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on a special record date for the payment of such Defaulted Interest (a "*Special Record Date*"), which shall be fixed in the following manner. At least thirty (30) days prior to the date of the proposed payment, the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest, which shall be not more than fifteen (15) days and not less than ten (10) days prior to the date of the proposed payment and not less than ten (10) days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class, postage prepaid, to each Holder of a Security at the address of such Holder as it appears in the Securities Register not less than ten (10) days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered on such Special Record Date; or

(ii) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or interdealer quotation system on which the Securities may be listed, traded or quoted and, upon such notice as may be required by such exchange or interdealer quotation system (or by the Trustee if the Securities are not so listed or quoted), if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such payment shall be deemed practicable by the Trustee.

(d) Payments of interest on the Securities shall include interest accrued to but excluding the respective Interest Payment Dates. During the Fixed Rate Period, the amount of interest payable shall be computed on the basis of a 360-day year of twelve 30-day months and the amount payable for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any Interest Period will be computed on the basis of a 360-day year and the actual number of days elapsed in the relevant interest period.

(e) Payment of principal of, premium, if any, and interest on the Securities shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of such Securities shall be made at the Place of Payment upon surrender of such Securities to the Paying Agent and payments of interest shall be made subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register.

(f) Intentionally Omitted.

(g) The Company may, at its option from time to time, upon not less than three (3) Business Days written notice to the Trustee (with a copy to Chuck Logan at The Bank of new York Mellon Global Trust, N.A., 525 William Penn Boulevard, 8th Floor, Pittsburg, Pennsylvania 15259, Facsimile: (412) 236-1141) and the Holders, elect to terminate the Modification Period.

(h) Subject to the foregoing provisions of this Section 3.1, each Security delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Security.

SECTION 3.2. *Denominations.*

The Securities shall be in registered form without coupons and shall be issuable in minimum denominations of $100,000 and any integral multiple of $1,000 in excess thereof.

SECTION 3.3. *Execution, Authentication, Delivery and Dating.*

(a) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities in an aggregate principal amount (including all then Outstanding Securities) not in excess of One Hundred Four Million Nine Hundred Thousand Dollars ($104,900,000) executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and shall be fully protected in relying upon:

(i) a copy of any Board Resolution relating thereto; and

(ii) an Opinion of Counsel stating that: (1) such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute, and the Indenture constitutes, valid and legally binding obligations of the Company, each enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles; (2) the Securities have been duly authorized and executed by the Company and have been delivered to the Trustee for authentication in accordance with this Indenture; (3) the Securities are not required to be registered under the Securities Act; and (4) the Indenture is not required to be qualified under the Trust Indenture Act.

(b) The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its President or one of its Vice Presidents. The signature of any of these officers on the Securities may be manual or facsimile. Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

(c) No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by the manual signature of one of its authorized signatories, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 3.8, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

(d) Each Security shall be dated the date of its authentication.

SECTION 3.4. *Global Securities.*

(a) Upon the election of the Holder after the Original Issue Date, which election need not be in writing, the Securities owned by such Holder shall be issued in the form of one or more Global Securities registered in the name of the Depositary or its nominee. Each Global Security issued under this Indenture shall be registered in the name of the Depositary designated by the Company for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for registered Securities, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (i) such Depositary advises the Trustee and the Company in writing that such Depositary is no longer willing or able to properly discharge its responsibilities as Depositary with respect to such Global Security, and no qualified successor is appointed by the Company within ninety (90) days of receipt by the Company of such notice, (ii) such Depositary ceases to be a clearing agency registered under the Exchange Act and no successor is appointed by the Company within ninety (90) days after obtaining knowledge of such event, (iii) the Company executes and delivers to the Trustee a Company Order stating that the Company elects to terminate the book-entry system through the Depositary or (iv) an Event of Default shall have occurred and be continuing. Upon the occurrence of any event specified in clause (i), (ii), (iii) or (iv) above, the Trustee shall notify the Depositary and instruct the Depositary to notify all owners of beneficial interests in such Global Security of the occurrence of such event and of the availability of Securities to such owners of beneficial interests requesting the same. The Trustee may conclusively rely, and be protected in relying, upon the written identification of the owners of beneficial interests furnished by the Depositary, and shall not be liable for any delay resulting from a delay by the Depositary. Upon the issuance of such Securities and the registration in the Securities Register of such Securities in the names of the Holders of the beneficial interests therein, the Trustees shall recognize such holders of beneficial interests as Holders.

(c) If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, then either (i) such Global Security shall be so surrendered for exchange or cancellation as provided in this Article III or (ii) the principal amount thereof shall be reduced or increased by an amount equal to (x) the portion thereof to be so exchanged or canceled, or (y) the principal amount of such other Security 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 Securities Registrar, whereupon the Trustee, in accordance with the Applicable Depositary Procedures, shall instruct the Depositary or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security by the Depositary, accompanied by registration instructions, the Company shall execute and the Trustee shall authenticate and deliver any Securities issuable in exchange for such Global Security (or any portion thereof) in accordance with the instructions of the Depositary. The Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

(d) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depositary for such Global Security or a nominee thereof.

(e) *Reserved.*

(f) The Depositary or its nominee, as the registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under this Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Depositary Procedures. Accordingly, any such owner's beneficial interest in a Global Security 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 Depositary Participants. The Securities Registrar and the Trustee shall be entitled to deal with the Depositary for all purposes of this Indenture relating to a Global Security (including the payment of principal and interest thereon and the giving of instructions or directions by owners of beneficial interests therein and the giving of notices) as the sole Holder of the Security and shall have no obligations to the owners of beneficial interests therein. Neither the Trustee nor the Securities Registrar shall have any liability in respect of any transfers effected by the Depositary.

(g) The rights of owners of beneficial interests in a Global Security shall be exercised only through the Depositary and shall be limited to those established by law and agreements between such owners and the Depositary and/or its Depositary Participants.

(h) No holder of any beneficial interest in any Global Security held on its behalf by a Depositary shall have any rights under this Indenture with respect to such Global Security, and such Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. None of the Company, the Trustee nor any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or maintaining, supervising or reviewing any records relating to such beneficial ownership interests. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by a Depositary or impair, as between a Depositary and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depositary (or its nominee) as Holder of any Security.

SECTION 3.5. *Registration, Transfer and Exchange Generally.*

(a) The Trustee shall cause to be kept at the Corporate Trust Office a register (the "*Securities Register*") in which the registrar and transfer agent with respect to the Securities (the "*Securities Registrar*"), subject to such reasonable regulations as it may prescribe, shall provide for the registration of Securities and of transfers and exchanges of Securities. The Trustee shall at all times also be the Securities Registrar. The provisions of Article VI shall apply to the Trustee in its role as Securities Registrar.

(b) Subject to compliance with Section 2.2(b), upon surrender for registration of transfer of any Security at the offices or agencies of the Company designated for that 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 Securities of any authorized denominations of like tenor and aggregate principal amount.

(c) At the option of the Holder, Securities may be exchanged for other Securities of any authorized denominations, of like tenor and aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

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

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

(f) No service charge shall be made to a Holder for any transfer or exchange of Securities, 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 transfer or exchange of Securities.

(g) Neither the Company nor the Trustee shall be required pursuant to the provisions of thisSection 3.5(g): (i) to issue, register the transfer of or exchange any Security during a period beginning at the opening of business fifteen (15) days before the day of selection for redemption of Securities pursuant to Article XI and ending at the close of business on the day of mailing of the notice of redemption or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except, in the case of any such Security to be redeemed in part, any portion thereof not to be redeemed.

(h) The Company shall designate an office or offices or agency or agencies where Securities may be surrendered for registration or transfer or exchange. The Company initially designates the Corporate Trust Office as its office and agency for such purposes. The Company shall give prompt written notice to the Trustee and to the Holders of any change in the location of any such office or agency.

(i) The Securities may only be transferred to a “Qualified Purchaser” as such term is defined in Section 2(a)(51) of the Investment Company Act.

(j) Neither the Trustee nor the Securities Registrar shall be responsible for ascertaining whether any transfer hereunder complies with the registration provisions of or any exemptions from the Securities Act, applicable state securities laws or the applicable laws of any other jurisdiction, ERISA, the Code, or the Investment Company Act; provided, that if a certificate is specifically required by the express terms of this Section 3.5 to be delivered to the Trustee or the Securities Registrar by a Holder or transferee of a Security, the Trustee and the Securities Registrar shall be under a duty to receive and examine the same to determine whether or not the certificate substantially conforms on its face to the requirements of this Indenture and shall promptly notify the party delivering the same if such certificate does not comply with such terms.

SECTION 3.6. *Mutilated, Destroyed, Lost and Stolen Securities.*

(a) If any mutilated Security is surrendered to the Trustee together with such security or indemnity as may be required by the Trustee to save the Company and the Trustee harmless, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and aggregate principal amount and bearing a number not contemporaneously outstanding.

(b) If there shall be delivered to the Trustee (i) evidence to its satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by it to save each of the Company and the Trustee harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a *bona fide* purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and aggregate principal amount as such destroyed, lost or stolen Security, and bearing a number not contemporaneously outstanding.

(c) If any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

(d) Upon the issuance of any new Security under this Section 3.6, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(e) Every new Security issued pursuant to this Section 3.6 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

(f) The provisions of this Section 3.6 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 3.7. *Persons Deemed Owners.*

The Company, the Trustee and any agent of the Company or the Trustee shall treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any interest on such Security and for all other purposes whatsoever, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 3.8. *Cancellation.*

All Securities surrendered for payment, redemption, transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Securities surrendered directly to the Trustee for any such purpose shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section 3.8, except as expressly permitted by this Indenture. All canceled Securities shall be retained or disposed of by the Trustee in accordance with its customary practices and the Trustee shall deliver to the Company a certificate of such disposition.

SECTION 3.9. *Reserved.*

SECTION 3.10. *Reserved.*

SECTION 3.11. *Agreed Tax Treatment.*

(a) Each Security issued hereunder shall provide that the Company and, by its acceptance or acquisition of a Security or a beneficial interest therein, the Holder of, and any Person that acquires a direct or indirect beneficial interest in, such Security, intend and agree to treat such Security as indebtedness of the Company for United States Federal, state, local and foreign tax purposes. The provisions of this Indenture shall be interpreted to further this intention and agreement of the parties.

(b) Any and all payments by or for the account of the Holders, or in respect of the Securities, shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings (to the extent provided in Section 10.8), and all liabilities with respect thereto, excluding net income taxes and franchise taxes imposed on (or measured by) net income imposed on any Holder, or any other recipient of any payment to be made by or on account of any obligation of the Company hereunder as a result of a present or former connection between such Person and the jurisdiction imposing such tax levy, impost or withholding or any political subdivision or taxing authority thereof or therein, other than any such connection arising solely from such Holder having executed, delivered or performed its obligations or received a payment under, or enforced, the Securities (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities in respect of payments hereunder or under the Securities being hereinafter referred to as "*Taxes*"). If it is required by law that any Taxes from or in respect of any sum payable hereunder or under any Security be deducted or withheld, (i) the sum payable by the Company shall be increased as may be necessary so that after the Company and such Holder, as the case may be, have made all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 3.11) such Holder receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the Company shall make all such deductions or withholdings, and (iii) the Company shall pay the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with applicable law.

(c) In addition, the Company shall pay to the relevant taxing authority in accordance with applicable law, and indemnify and hold the Holders harmless from, any present or future stamp, documentary, excise, property or similar taxes, charges or levies that arise from any payment made hereunder or under the Securities or from the execution, delivery or registration of, performance under, or otherwise with respect to, this Indenture or the Securities (hereinafter referred to as "*Other Taxes*").

(d) The Company shall indemnify each Holder for and hold each Holder harmless against the full amount of Taxes and Other Taxes, and for the full amount of Taxes and Other Taxes of any kind imposed by any jurisdiction on amounts payable under this Section 3.11, imposed on or paid by any such Holder and any liability (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto. This indemnification shall be made within thirty (30) days from the date any such Holder makes written demand therefor.

(e) Within thirty (30) days after the adate of any payment of Taxes, the Company shall furnish to any such Holder the original or a certified copy of a receipt evidencing such payment.

(f) Each Holder shall, upon the written request of the Company, deliver to the Company its Internal Revenue Service Forms W-8 and/or W-9, as applicable, to the extent available.

SECTION 3.12. *CUSIP Numbers.*

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

ARTICLE IV

Satisfaction and Discharge

SECTION 4.1. *Satisfaction and Discharge of Indenture.*

This Indenture shall, upon Company Request, cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for and as otherwise provided in this Section 4.1) 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 Securities theretofore authenticated and delivered (other than (A) Securities that have been mutilated, destroyed, lost or stolen and that have been replaced or paid as provided in Section 3.6 and (B) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided in Section 10.2) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee for cancellation

(A) have become due and payable, or

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

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

and the Company, in the case of subclause (ii)(A), (B) or (C) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose (x) an amount in the currency or currencies in which the Securities are payable, (y) Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount or (z) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest (including any Additional Interest) to the date of such deposit (in the case of Securities that have become due and payable) or to the Stated Maturity (or any date of principal repayment upon early maturity) or Redemption Date, as the case may be;

(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, the obligations of the Company to the Trustee under Section 6.6, the obligations of the Company to any Authenticating Agent under Section 6.11 and, if money shall have been deposited with the Trustee pursuant to subclause (a)(ii) of this Section 4.1, the obligations of the Trustee under Section 4.2 and Section 10.2(e) shall survive.

SECTION 4.2. *Application of Trust Money.*

Subject to the provisions of Section 10.2(d), all money deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by the Trustee, in accordance with the provisions of the Securities and this Indenture, to the payment in accordance with Section 3.1, either directly or through any Paying Agent as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest (including any Additional Interest) for the payment of which such money or obligations have been deposited with or received by the Trustee. Moneys held by the Trustee under this Section 4.2 shall not be subject to the claims of holders of Senior Debt under Article XII.

ARTICLE V

Remedies

SECTION 5.1. *Events of Default.*

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

(a) default in the payment of any interest upon any Security, including any Additional Interest in respect thereof, when it becomes due and payable, and continuance of such default for a period of thirty (30) days; provided, however, that during the Modification Period, such thirty (30) day period shall be reduced to three (3) Business Days;

(b) default in the payment of the principal of or any premium on any Security at its Maturity;

(c) Except as otherwise set forth in this Section 5.1, default in the performance, or breach, of any covenant or warranty of the Company in this Indenture or the Exchange Agreement and continuance of such default or breach for a period of thirty (30) days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least twenty five percent (25%) in aggregate principal amount of the Outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

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

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

(f) default in the performance or breach of any covenant or warranty of the Company set forth inSection 10.5 (Pledge of Certain Collateral) or Section 10.6 (Distributions) and the continuance of such default for a period of three (3) Business Days; or

(g) default or breach of any of the terms, provisions or covenants set forth in the Pledge, Security Agreement and Account Control Agreement or the Pledge and Security Agreement and the continuance of such default for a period of three (3) Business Days.

SECTION 5.2. *Acceleration of Maturity; Rescission and Annulment.*

(a) If an Event of Default occurs and is continuing, then and in every such case the Trustee or the Holders of not less than twenty five percent (25%) in aggregate principal amount of the Outstanding Securities may declare the principal amount of all the Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration the principal amount of and the accrued interest (including any Additional Interest) on all the Securities shall become immediately due and payable.

(b) At any time after such a declaration of acceleration with respect to Securities has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in this Article V, the Holders of a majority in aggregate principal amount of the Outstanding Securities, by written notice to the Trustee, may rescind and annul such declaration and its consequences if:

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

(A) all overdue installments of interest on all Securities,

(B) any accrued Additional Interest on all Securities,

(C) the principal of and any premium on any Securities that have become due otherwise than by such declaration of acceleration and interest (including any Additional Interest) thereon at the rate borne by the Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel; and

(ii) all Events of Default with respect to Securities, other than the non-payment of the principal of Securities that has become due solely by such acceleration, have been cured or waived as provided in Section 5.13;

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

SECTION 5.3. *Collection of Indebtedness and Suits for Enforcement by Trustee.*

(a) The Company covenants that if:

(i) default is made in the payment of any installment of interest (including any Additional Interest) on any Security when such interest becomes due and payable and such default continues for a period of thirty (30) days, or

(ii) default is made in the payment of the principal of and any premium on any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium and interest (including any Additional Interest) and, in addition thereto, all amounts owing the Trustee under Section 6.6.

(b) If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

(c) If an Event of Default with respect to Securities occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 5.4. *Trustee May File Proofs of Claim.*

In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or similar judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized hereunder in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to first pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6.

SECTION 5.5. *Trustee May Enforce Claim Without Possession of Securities.*

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, subject to Article XII and after provision for the payment of all the amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

SECTION 5.6. *Application of Money Collected.*

Any money or property collected or to be applied by the Trustee with respect to the Securities pursuant to this Article V shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money or property on account of principal or any premium or interest (including any Additional Interest), upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee, any predecessor Trustee and other Persons under Section 6.6;

SECOND: To the payment of all Senior Debt of the Company if and to the extent required by Article XII;

THIRD: Subject to Article XII, to the payment of the amounts then due and unpaid upon the Securities for principal and any premium and interest (including any Additional Interest) in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and any premium and interest (including any Additional Interest), respectively; and

FOURTH: The balance, if any, to the Person or Persons entitled thereto.

SECTION 5.7. *Limitation on Suits.*

Subject to Section 5.8, no Holder of any Securities shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a custodian, receiver, assignee, trustee, liquidator, sequestrator (or other similar official) or for any other remedy hereunder, unless:

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities;

(b) the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

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

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

(e) no direction inconsistent with such written request has been given to the Trustee during such sixty (60)-day period by the Holders of a majority in aggregate principal amount of the Outstanding Securities;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Securities, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

SECTION 5.8. *Unconditional Right of Holders to Receive Principal, Premium, if any, and Interest.*

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium on such Security at its Maturity and payment of interest (including any Additional Interest) on such Security when due and payable and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

SECTION 5.9. *Restoration of Rights and Remedies.*

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

SECTION 5.10. *Rights and Remedies Cumulative.*

Except as otherwise provided in Section 3.6(f), no right or remedy herein conferred upon or reserved to the Trustee or the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 5.11. *Delay or Omission Not Waiver.*

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

SECTION 5.12. *Control by Holders.*

The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; *provided*, that:

(a) such direction shall not be in conflict with any rule of law or with this Indenture,

(b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction, and

(c) subject to the provisions of Section 6.2, the Trustee shall have the right to decline to follow such direction if a Responsible Officer or Officers of the Trustee shall, in good faith, reasonably determine that the proceeding so directed would be unjustly prejudicial to the Holders not joining in any such direction or would involve the Trustee in personal liability.

SECTION 5.13. *Waiver of Past Defaults.*

(a) The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities may waive any past Event of Default hereunder and its consequences except an Event of Default:

(i) in the payment of the principal of or any premium or interest (including any Additional Interest) on any Outstanding Security (unless such Event of Default has been cured and the Company has paid to or deposited with the Trustee a sum sufficient to pay all installments of interest (including any Additional Interest) due and past due and all principal of and any premium on all Securities due otherwise than by acceleration), or

(ii) in respect of a covenant or provision hereof that under Article IX cannot be modified or amended without the consent of each Holder of any Outstanding Security.

(b) Any such waiver shall be deemed to be on behalf of the Holders of all the Outstanding Securities.

(c) Upon any such waiver, such Event of 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 Event of Default or impair any right consequent thereon.

SECTION 5.14. *Undertaking for Costs.*

All parties to this Indenture agree, and each Holder of any Security by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.14 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than ten percent (10%) in aggregate principal amount of the Outstanding Securities, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or any premium on the Security after the Stated Maturity or any interest (including any Additional Interest) on any Security after it is due and payable.

SECTION 5.15. *Waiver of Usury, Stay or Extension Laws.*

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

ARTICLE VI

The Trustee

SECTION 6.1. *Corporate Trustee Required.*

There shall at all times be a Trustee hereunder with respect to the Securities. The Trustee shall be a corporation or national banking association organized and doing business under the laws of the United States or of any state thereof, authorized to exercise corporate trust powers, having a combined capital and surplus of at least $50,000,000, subject to supervision or examination by Federal or state authority and having an office within the United States. If such entity publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then, for the purposes of this Section 6.1, the combined capital and surplus of such entity shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.1, it shall resign immediately in the manner and with the effect hereinafter specified in thisArticle VI.

SECTION 6.2. *Certain Duties and Responsibilities.*

Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; *provided*, that in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they substantially conform on their face to the requirements of this Indenture.

(b) If an Event of Default known to the Trustee has occurred and is continuing, the Trustee shall, prior to the receipt of directions, if any, from the Holders of at least a majority in aggregate principal amount of the Outstanding Securities, 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.

(c) Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.2. To the extent that, at law or in equity, the Trustee has duties and liabilities relating to the Holders, the Trustee shall not be liable to any Holder for the Trustee's good faith reliance on the provisions of this Indenture. The provisions of this Indenture, to the extent that they restrict the duties and liabilities of the Trustee otherwise existing at law or in equity, are agreed by the Company and the Holders to replace such other duties and liabilities of the Trustee.

(d) No provisions of this Indenture shall be construed to relieve the Trustee from liability with respect to matters that are within the authority of the Trustee under this Indenture for its own negligent action, negligent failure to act or willful misconduct, except that:

(i) the Trustee shall not be liable for any error or judgment made in good faith by an authorized officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of at least a majority in aggregate principal amount of the Outstanding Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee under this Indenture; and

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

SECTION 6.3. *Notice of Defaults.*

Within ninety (90) days after the occurrence of any default actually known to the Trustee, the Trustee shall give the Holders notice of such default unless such default shall have been cured or waived; *provided*, that except in the case of a default in the payment of the principal of or any premium or interest on any Securities, the Trustee shall be fully protected in withholding the notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that withholding the notice is in the interest of Holders of Securities; and *provided, further*, that in the case of any default of the character specified in Section 5.1(c), no such notice to Holders shall be given until at least thirty (30) days after the occurrence thereof. For the purpose of this Section 6.3, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

SECTION 6.4. *Certain Rights of Trustee.*

Subject to the provisions of Section 6.2:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting in good faith and in accordance with the terms hereof upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) if (i) in performing its duties under this Indenture the Trustee is required to decide between alternative courses of action, (ii) in construing any of the provisions of this Indenture the Trustee finds ambiguous or inconsistent with any other provisions contained herein or (iii) the Trustee is unsure of the application of any provision of this Indenture, then, except as to any matter as to which the Holders are entitled to decide under the terms of this Indenture, the Trustee shall deliver a notice to the Company requesting the Company's written instruction as to the course of action to be taken and the Trustee shall take such action, or refrain from taking such action, as the Trustee shall be instructed in writing to take, or to refrain from taking, by the Company; provided, that if the Trustee does not receive such instructions from the Company within ten Business Days after it has delivered such notice or such reasonably shorter period of time set forth in such notice the Trustee may, but shall be under no duty to, take such action, or refrain from taking such action, as the Trustee shall deem advisable and in the best interests of the Holders, in which event the Trustee shall have no liability except for its own negligence, bad faith or willful misconduct;

(c) any request or direction of the Company shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

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

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction, including reasonable advances as may be requested by the Trustee;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, indenture, note or other paper or document, but the Trustee in its discretion may make such inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

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

(h) whenever in the administration of this Indenture the Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action with respect to enforcing any remedy or right hereunder, the Trustee (i) may request instructions from the Holders (which instructions may only be given by the Holders of the same aggregate principal amount of Outstanding Securities as would be entitled to direct the Trustee under this Indenture in respect of such remedy, right or action), (ii) may refrain from enforcing such remedy or right or taking such action until such instructions are received and (iii) shall be protected in acting in accordance with such instructions;

(i) except as otherwise expressly provided by this Indenture, the Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Indenture;

(j) without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with any bankruptcy, insolvency or other proceeding referred to in clauses (d) or (e) of the definition of Event of Default, such expenses (including legal fees and expenses of its agents and counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy laws or law relating to creditors rights generally;

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

(l) the Trustee shall not be charged with knowledge of any Event of Default unless either (i) a Responsible Officer of the Trustee shall have actual knowledge or (ii) the Trustee shall have received written notice thereof from the Company or a Holder; and

(m) in the event that the Trustee is also acting as Paying Agent, Authenticating Agent, Calculation Agent, or Securities Registrar hereunder, the rights and protections afforded to the Trustee pursuant to this Article VI shall also be afforded such Paying Agent, Authenticating Agent, Calculation Agent, or Securities Registrar.

SECTION 6.5. *May Hold Securities.*

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

SECTION 6.6. *Compensation; Reimbursement; Indemnity.*

(a) The Company agrees:

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

(ii) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, bad faith or willful misconduct; and

(iii) to the fullest extent permitted by applicable law, to indemnify the Trustee and its Affiliates, and their officers, directors, shareholders, agents, representatives and employees for, and to hold them harmless against, any loss, damage, liability, tax (other than income, franchise or other taxes imposed on amounts paid pursuant to (i) or (ii) hereof), penalty, expense or claim of any kind or nature whatsoever incurred without negligence, bad faith or willful misconduct on its part arising out of or in connection with the acceptance or administration of this trust or the performance of the Trustee's duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

(b) To secure the Company's payment obligations in this Section 6.6, the Company hereby grants and pledges to the Trustee and the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, other than money or property held in trust to pay principal and interest on particular Securities. Such lien shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee.

(c) The obligations of the Company under this Section 6.6 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal of the Trustee.

(d) In no event shall the Trustee be liable for any indirect, special, punitive or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(e) In no event shall the Trustee be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Indenture.

SECTION 6.7. *Resignation and Removal; Appointment of Successor.*

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article VI shall become effective until the acceptance of appointment by the successor Trustee under Section 6.8.

(b) The Trustee may resign at any time after providing thirty (30) days' written notice thereof to the Company and the Holders.

(c) The Trustee may be removed by the Act of the Holders of at least a majority in aggregate of principal amount of the Outstanding Securities, delivered to the Trustee and the Company; provided, that prior to an Event of Default, the written consent of the Company (not to be unreasonably withheld) shall be required for the removal of the Trustee, which consent or objection shall be provided within three (3) Business Days and if not so given in writing, be deemed granted.

(d) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any reason, the Holders of the Outstanding Securities shall promptly appoint a successor Trustee, and such successor Trustee and the retiring Trustee shall comply with the applicable requirements of Section 6.8 provided, that prior to an Event of Default, the written consent of the Company (not to be unreasonably withheld) shall be required for the removal of the Trustee, which consent or objection shall be provided within three (3) Business Days and if not so given in writing, be deemed granted. If no successor Trustee shall have been so appointed by the Holders and accepted appointment within sixty (60) days after the giving of a notice of resignation by the Trustee or the removal of the Trustee in the manner required by Section 6.8, any Holder who has been a bona fide Holder of a Security for at least six months (or, if the Securities have been Outstanding for less than six (6) months, the entire period of such lesser time) may, on behalf of such Holder and all others similarly situated, and any resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee.

SECTION 6.8. *Acceptance of Appointment by Successor.*

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

(b) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all rights, powers and trusts referred to in paragraph (a) of this Section 6.8.

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

SECTION 6.9. *Merger, Conversion, Consolidation or Succession to Business.*

Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided*, that such Person shall be otherwise qualified and eligible under this Article VI. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation or as otherwise provided above in this Section 6.9 to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated, and in case any Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor Trustee or in the name of such successor Trustee, and in all cases the certificate of authentication shall have the full force which it is provided anywhere in the Securities or in this Indenture that the certificate of the Trustee shall have.

SECTION 6.10. *Not Responsible for Recitals or Issuance of Securities.*

The recitals contained herein and in the Securities, except the Trustee’s certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Securities or the proceeds thereof.

SECTION 6.11. *Appointment of Authenticating Agent.*

(a) The Trustee may appoint an Authenticating Agent or Agents with respect to the Securities, which shall be authorized to act on behalf of the Trustee to authenticate Securities issued upon original issue and upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.6, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee’s certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation or national banking association organized and doing business under the laws of the United States of America, or of any State or Territory thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by Federal or state authority. If such Authenticating Agent publishes reports of condition at least annually pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 6.11 the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.11, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 6.11.

(b) Any Person into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of an Authenticating Agent shall be the successor Authenticating Agent hereunder, *provided* such Person shall be otherwise eligible under this Section 6.11, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

(c) An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.11, the Trustee may appoint a successor Authenticating Agent eligible under the provisions of this Section 6.11, which shall be acceptable to the Company, and shall give notice of such appointment to all Holders. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent.

(d) The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.11 in such amounts as the Company and the Authenticating Agent shall agree from time to time.

(e) If an appointment of an Authenticating Agent is made pursuant to this Section 6.11, the Securities may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

This is one of the Securities referred to in the within mentioned Indenture.

Dated:

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION,
not in its individual capacity, but solely as Trustee

By: ______________________________
Authenticating Agent

By: ______________________________
Authorized Signatory

ARTICLE VII

Holder's Lists and Reports by Company

SECTION 7.1. *Securities Registrar to Furnish Trustee Names and Addresses of Holders.*

The Securities Registrar will furnish or cause to be furnished to the Trustee:

(a) semiannually, on or before June 30 and December 31 of each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a date not more than fifteen (15) days prior to the delivery thereof, and

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

in each case to the extent such information is in the possession or control of the Securities Registrar and has not otherwise been received by the Trustee in its capacity as Securities Registrar.

SECTION 7.2. *Preservation of Information, Communications to Holders.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Securities Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, shall be as provided in the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of information as to the names and addresses of the Holders made pursuant to the Trust Indenture Act.

SECTION 7.3. *Reports by Company.*

(a) The Company shall furnish to the Holders and to prospective purchasers of Securities, upon their request, the information required to be furnished pursuant to Rule 144A(d)(4) under the Securities Act. The delivery requirement set forth in the preceding sentence may be satisfied by compliance with Section 7.3(b) hereof.

(b) The Company shall furnish to each of (i) the Trustee, (ii) the Holders and to subsequent holders of Securities, (iii) Taberna Capital Management, LLC, 450 Park Avenue, New York, New York 10022, Attn: Raphael Licht (or such other address as designated by Taberna Capital Management, LLC) and (iv) any beneficial owner of the Securities reasonably identified to the Company (which identification may be made either by such beneficial owner or by Taberna Capital Management, LLC), a duly completed and executed certificate substantially and substantively in the form attached hereto as Exhibit A, including the financial statements referenced in such Exhibit, which certificate and financial statements shall be so furnished by the Company not later than forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company and not later than ninety (90) days after the end of each fiscal year of the Company, to the extent such statements are not available or have not been filed by the Company on the Commission's Electronic Data Gathering, Analysis and Retrieval system (or any successor to such electronic filing system, *"EDGAR"*) within the required time period; if the Company is not a company reporting with the Securities and Exchange Commission (the "*Commission*"), the financial statements referenced in said Exhibit shall be delivered to the Trustee and the Holders as provided above. If such statements are available via EDGAR the Company shall not be required to provide either the certificate or the financial statements.

(c) If the Company does not intend to file its annual and quarterly information with the Securities and Exchange Commission (the "*Commission*") in electronic form pursuant to Regulation S-T of the Commission using the EDGAR system, the Company shall notify the Trustee in the manner prescribed herein and shall deliver the certificates and financial statements for each such annual and quarterly filing period as provided in subsection (b) above. The Trustee is hereby authorized and directed to access the EDGAR system for purposes of retrieving the financial information so filed. The Trustee may register with the Company on the Company's website to receive the information so filed but shall not be required to do so. Taberna Capital Management, LLC is likewise authorized to register with the Company on the Company's website to receive the information so filed but shall not be required to do so. Compliance with the foregoing shall constitute delivery by the Company of its financial statements to the Trustee in compliance with the provisions of Section 314(a) of the Trust Indenture Act, if applicable. The Trustee shall have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of reports, information and documents to the Trustee pursuant to this Section 7.3(c) shall be solely for purposes of compliance with this Section 7.3(c) and, if applicable, with Section 314(a) of the Trust Indenture Act. The Trustee's receipt of such reports, information and documents shall not constitute notice to it of the content thereof or any matter determinable from the content thereof, including the Company's compliance with any of its covenants hereunder, as to which the Trustee is entitled to rely upon Officers' Certificates.

ARTICLE VIII

Consolidation, Merger, Conveyance, Transfer or Lease

SECTION 8.1. *Company May Consolidate, Etc., Only on Certain Terms.*

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and no Person shall consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

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

(b) immediately after giving effect to such transaction, no Event of Default, and no event that, after notice or lapse of time, or both, would constitute an Event of Default, shall have happened and be continuing; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, any such supplemental indenture comply with this Article VIII and that all conditions precedent herein provided for relating to such transaction have been complied with; and the Trustee may rely upon such Officers' Certificate and Opinion of Counsel as conclusive evidence that such transaction complies with this Section 8.1.

SECTION 8.2. *Successor Company Substituted.*

(a) Upon any consolidation or merger by the Company with or into any other Person, or any conveyance, transfer or lease by the Company of its properties and assets substantially as an entirety to any Person in accordance with Section 8.1 and the execution and delivery to the Trustee of the supplemental indenture described in Section 8.1(a), the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and in the event of any such conveyance or transfer, following the execution and delivery of such supplemental indenture, the Company shall be discharged from all obligations and covenants under the Indenture and the Securities.

(b) Such successor Person may cause to be executed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities that such successor Person thereafter shall cause to be executed and delivered to the Trustee on its behalf. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture.

(c) In case of any such consolidation, merger, sale, conveyance or lease, such changes in phraseology and form may be made in the Securities thereafter to be issued as may be appropriate to reflect such occurrence.

ARTICLE IX

Supplemental Indentures

SECTION 9.1. *Supplemental Indentures without Consent of Holders.*

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

(a) to evidence the succession of another Person to the Company, and the assumption by any such successor of the covenants of the Company herein and in the Securities; or

(b) to evidence and provide for the acceptance of appointment hereunder by a successor trustee; or

(c) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make or amend any other provisions with respect to matters or questions arising under this Indenture, which shall not be inconsistent with the other provisions of this Indenture, provided, that such action pursuant to this clause (b) shall not adversely affect in any material respect the interests of any Holders; or

(d) to comply with the rules and regulations of any securities exchange or interdealer quotation system on which any of the Securities may be listed, traded or quoted; or

(e) to add to the covenants, restrictions or obligations of the Company or to add to the Events of Default, provided, that such action pursuant to this clause (e) shall not adversely affect in any material respect the interests of any Holders or

(f) to modify, eliminate or add to any provisions of the Indenture or the Securities to such extent as shall be necessary to ensure that the Securities are treated as indebtedness of the Company for United States Federal income tax purposes, provided, that such action pursuant to this clause (f) shall not adversely affect in any material respect the interests of any Holders.

SECTION 9.2. *Supplemental Indentures with Consent of Holders.*

(a) Subject to Section 9.1, with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by Company Order or Company Request, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities under this Indenture; provided, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security,

(i) change the Stated Maturity of the principal or any premium of any Security or change the date of payment of any installment of interest (including any Additional Interest) on any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof or change the place of payment where, or the coin or currency in which, any Security or interest thereon is payable, or restrict or impair the right to institute suit for the enforcement of any such payment on or after such date, or

(ii) reduce the percentage in aggregate principal amount of the Outstanding Securities, 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 any provision of this Indenture or of defaults hereunder and their consequences provided for in this Indenture, or

(iii) modify any of the provisions of this Section 9.2, Section 5.13 or Section 10.7, except to increase any percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any reason, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security;

(b) It shall not be necessary for any Act of Holders under this Section 9.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 9.3. *Execution of Supplemental Indentures.*

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article IX or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in conclusively relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent herein relating to such action have been complied with. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, indemnities or immunities under this Indenture or otherwise. Copies of the final form of each supplemental indenture shall be delivered by the Company to the Holders at the expense of the Company.

SECTION 9.4. *Effect of Supplemental Indentures.*

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

SECTION 9.5. *Reference in Securities to Supplemental Indentures.*

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

ARTICLE X

Covenants

SECTION 10.1. *Payment of Principal, Premium, if any, and Interest.*

The Company covenants and agrees for the benefit of the Holders of the Securities that it will duly and punctually pay the principal of and any premium and interest (including any Additional Interest) on the Securities in accordance with the terms of the Securities and this Indenture.

SECTION 10.2. *Money for Security Payments to be Held in Trust.*

(a) Whenever the Company shall have one or more Paying Agents, it will, prior to 10:00 a.m., New York City time, on each due date of the principal of or any premium or interest (including any Additional Interest) on any Securities, deposit with such Paying Agent a sum sufficient to pay such amount, such sum to be held as provided in the Trust Indenture Act and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its failure to so act.

(b) The Company will cause each Paying Agent for the Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 10.2, that such Paying Agent will (i) comply with the provisions of this Indenture and the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities) in the making of any payment in respect of the Securities, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities.

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

(d) Any money deposited with the Trustee or any Paying Agent for the payment of the principal of and any premium or interest (including any Additional Interest) on any Security and remaining unclaimed for two years after such principal and any premium or interest has become due and payable shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be paid on Company Request to the Company, or (if then held by the Company) shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 10.3. *Statement as to Compliance.*

The Company shall deliver to the Trustee and to Taberna Capital Management, LLC, within one hundred and twenty (120) days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate covering the preceding calendar year, stating whether or not to the knowledge of the signers thereof the Company is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder), and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

SECTION 10.4. *Calculation Agent.*

(a) The Company hereby agrees that for so long as any of the Securities remain Outstanding, there will at all times be an agent appointed to calculate LIBOR in respect of each Interest Payment Date in accordance with the terms of Schedule A (the "*Calculation Agent*"). The Company has initially appointed the Trustee as Calculation Agent for purposes of determining LIBOR for each Interest Payment Date. The Calculation Agent may be removed by the Holders at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Holders, the Holders will promptly appoint as a replacement Calculation Agent the London office of a leading bank which is engaged in transactions in Eurodollar deposits in the international Eurodollar market and which does not control or is not controlled by or under common control with the Company or its Affiliates. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) The Calculation Agent shall be required to agree that, as soon as possible after 11:00 a.m. (London time) on each LIBOR Determination Date (as defined in Schedule A), but in no event later than 11:00 a.m. (London time) on the Business Day immediately following each LIBOR Determination Date, the Calculation Agent will calculate the interest rate (the Interest Payment shall be rounded to the nearest cent, with half a cent being rounded upwards) for the related Interest Payment Date, and will communicate such rate and amount to the Company, the Trustee, each Paying Agent and the Depositary. The Calculation Agent will also specify to the Company the quotations upon which the foregoing rates and amounts are based and, in any event, the Calculation Agent shall notify the Company before 5:00 p.m. (London time) on each LIBOR Determination Date that either: (i) it has determined or is in the process of determining the foregoing rates and amounts or (ii) it has not determined and is not in the process of determining the foregoing rates and amounts, together with its reasons therefor. The Calculation Agent's determination of the foregoing rates and amounts for any Interest Payment Date will (in the absence of manifest error) be final and binding upon all parties. For the sole purpose of calculating the interest rate for the Securities, "Business Day" shall be defined as any day on which dealings in deposits in Dollars are transacted in the London interbank market.

SECTION 10.5. *Pledge of Certain Collateral.*

(a) Pledge of Pledged Collateral. The Company shall deliver to the Trustee the fully executed (i) Pledge, Security Agreement and Account Control Agreement and (b) Pledge and Security Agreement. The Pledged Collateral shall be security for all payments due or to become due with respect to the outstanding Securities. The Company represents and warrants that the Trustee has, and the Company shall cause and shall take all necessary action to ensure that the Trustee at all times continues to have, a first priority security interest in the Pledged Collateral. The Trustee shall incur no liability to any Person as a result of taking any action with respect to the Pledged Collateral directed by the Holders. Neither the Company nor the Pledged Entity shall have the right to receive or to sell, release, dispose of or negotiate the Pledged Collateral during the Modification Period or at any time during the existence of a default or Event of Default; *provided, however*, that, during the Modification Period (so long as no Event of Default has occurred), the Pledged Entity shall be permitted to participate in the negotiation of the terms of any modification, restructure or forbearance, or the settlement of any litigation with respect to the Mezzanine Loan, *provided, further*, that the Pledged Entity and the Company shall promptly (i) provide or cause to be provided to the Holders copies of all notices and requests received or sent by the Company in writing pursuant to the Participation Agreement or otherwise with respect to the Participation Interest or the Mezzanine Loan, and (ii) provide or cause to be provided to the Holders copies of all proposals in writing with respect to amendments, modifications, documents and/or other agreements relating thereto, as well as regular status updates with respect to any discussions or negotiations relating thereto.

(b) Deposit of Collateral. During the Modification Period, all cash amounts received by the Company or the Pledged Entity constituting or with respect to the Pledged Collateral shall, within two (2) Business Days, be deposited into the Account. In addition, any Pledged Collateral consisting of property or instruments other than cash, shall be held by the Company or the Pledged Entity, as applicable, in trust, for the benefit of the Trustee and the Company shall or shall cause the Pledged Entity to, promptly upon the request of Trustee or the Holders, execute such documents, instruments and agreements, and does hereby appoint the Trustee as its and the Pledged Entity's attorney-in-fact for purposes of entering into and/or filing any documents, instruments and agreements provided that such appointment shall not impose upon the Trustee any duty to take any such action for purposes of perfecting the interest of the Trustee in such Pledged Collateral.

(c) Release of Collateral. Upon the Modification Period Termination Date, so long as no default or Event of Default then exists, the Company and the Pledged Entity shall be permitted to request in writing to the Trustee (with a copy to Taberna Capital Management, LLC) a release of the Pledged Collateral and a release of the Pledge, Security Agreement and Account Control Agreement and the Pledge and Security Agreement (each such release, a *"Release of Collateral"*). Any request for a Release of Collateral shall include a certification and representation by the Company that no Event of Default exists, or event that with the passage of time or giving of notice would constitute an Event of Default exists. The Holders shall, so long as the foregoing conditions are met, direct the Trustee to effectuate the Release of Collateral under the Pledge, Security Agreement and Account Control Agreement and the Pledge and Security Agreement.

If this Indenture has been discharged, then the Pledge, Security Agreement and Account Control Agreement and Pledge and Security Agreement shall terminate and/or be cancelled, without any further action or direction by the Holders, and the Trustee shall then have no right to or claim on the Pledged Collateral.

(d) Trustee's Responsibilities Regarding Pledged Collateral. The Company hereby acknowledges and agrees for itself and the Pledged Entity that notwithstanding anything to the contrary contained in this Indenture, the Pledged Collateral is collateral solely for the payment and performance by the Company to the Holders hereunder and under the Securities. The Trustee shall, notwithstanding any contrary requirement or direction arising or given hereunder (including pursuant to any provision of Article XII) or under any documents executed in connection herewith, follow the written directions (each, a *"Release Notice"*) of the Holders with respect to any request for a sale, release or other disposition of all or any portion of the Pledged Collateral or any proceeds thereof, and the Trustee shall not have any duty, obligation or right to determine when and if any of the Pledged Collateral is to be sold or released, or otherwise disposed of or to whom any proceeds thereof will be distributed, except to the extent set forth in a Release Notice. In the absence of written direction from the Holders as to the disbursement of any proceeds, the Trustee shall hold such proceeds as additional collateral as provided herein and shall await further written instructions from the Holders prior to any release of such proceeds.

(e) Trustee Direction. The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, demand, consent, authorization, waiver, order, act, note or other communication, paper or document (each such item, a *"Trustee Direction"*) believed by it to be genuine and to have been signed, presented or delivered (whether by telecopy, electronic mail, first-class mail, courier service, or otherwise, notwithstanding any contradictory requirement hereunder) by a party or parties authorized to provide such Trustee Direction; provided, however, that the Trustee may require such additional evidence, confirmation or certification from any such party or parties as the Trustee, in its sole discretion, deems necessary or advisable before acting or refraining from acting upon any such Trustee Direction.

(f) Pledged Collateral as Independent Obligations. Notwithstanding anything to the contrary contained herein, the Company covenants and agrees that so long as any of the Pledged Collateral is held by it or the Pledged Entity pursuant to this Indenture and the other Indenture Documents, the Trustee shall be permitted as directed by the Holders, if an Event of Default has occurred and is continuing, to release, disburse, sell, or otherwise dispose of all or any portion of the Pledged Collateral and disburse the proceeds thereof as determined by the Holders and any application thereof by the Trustee and the Holders, shall (i) not be subordinate or subject in right of payment to the prior payment in full of any Senior Debt, and (ii) be permitted to be made in satisfaction of amounts due or to become due under this Indenture prior to the payment of any Senior Debt, even if (x) a default has occurred and is continuing (whether at maturity, by acceleration or otherwise) with respect to any such Senior Debt, (y) any Proceeding (whether relating to the Company or the Pledged Entity), has been commenced, or (z) any other condition exists pursuant to Article XII of, or otherwise in, any of this Indenture, or any other document executed in connection with any of the foregoing that would, but for this Section 10.5(f), prohibit such sale, release or other distribution or application. The Company hereby represents and warrants, for itself and the Pledged Entity, that it has reviewed the terms and provisions of its Senior Debt (as defined in each of the Indenture) documents, if any, and the Participation Agreement, and that nothing contained in this Section 10.5 violates, or is prohibited by, the terms of such Senior Debt documents or the Participation Agreement.

(g) Application of Proceeds of Pledged Collateral. All proceeds from the sale, release, or other disposition of any Pledged Collateral shall be allocated as determined by the Holders with respect to amounts due or to become due under the Securities.

(h) Ownership of Pledged Collateral; Other Liens. The Company represents and warrants that it is the sole legal and beneficial owner of the Pledged Entity and the Collateral (as defined in the Pledge and Security Agreement) and the Pledged Entity is the sole legal and beneficial owner of the Participation Interest and the Collateral (as defined on the Pledge, Security Agreement and Account Control Agreement), free and clear of all pledges, security interests, liens, charges and encumbrances, except for those created by this Indenture and the other Indenture Documents. No Person has any legal or equitable interest in or to any of the Company's or the Pledged Entity's right, title and interest to and under the Pledged Collateral, except for such interests created by this Indenture and the other Indenture Documents.

(i) No Conflict. The Company represents and warrants that execution, delivery and performance by Company of the Pledge, Security Agreement and Account Control Agreement and the Pledge and Security Agreement and by the Pledged Entity of the Pledge, Security Agreement and Account Control Agreement, will not (i) conflict in any material respect with, violate or result in a breach of any provision of any agreement or instrument to which the Company or the Pledged Entity is a party or by which it is bound or to which it is subject, (ii) require any consent (except such consents as have been obtained), or (iii) constitute a default under or result in a breach of or under the Participation Agreement, or (iv) constitute a material default under or result in a material breach of any material indenture, mortgage or other instrument or agreement to which the Company or the Pledged Entity is bound or to which any of their respective assets or property may be subject.

(j) Representations, Warranties and Covenants. All of the representations, warranties and covenants of the Company and the Pledged Entity contained in the Pledge and Security Agreement and in the Pledge, Security Agreement and Account Control Agreement are incorporated herein by reference, as if fully set forth herein and made by the Company.

(k) Pledged Entity as Single Purpose Entity. The Company represents, warrants and covenants that the Pledged Entity (i) is a wholly owned subsidiary of the Company, (ii) is a duly formed Delaware limited liability company and is validly existing under the laws of the state of Delaware, (iii) has not owned, does not own, and will not own any asset or property other than the Pledged Collateral and the Participation Interest other than Interest paid on the Account, (iv) has not engaged and will not engage in any business other than the purchase, ownership, sale, transfer or other disposition of the Pledged Collateral and Participation Interests, (v) has not incurred and will not incur any indebtedness of any nature, whether secured or unsecured or whether of a recourse or non-recourse nature, (vi) has not made and will not make any loans or advances to any Person whatsoever (including but not limited to the Company, any subsidiary or affiliate of the Company or any subsidiary, affiliate, or any constituent party of any of the foregoing), and has not issued and shall not issue obligations or securities (other than the issuance of membership interests to the Company in connection with the Pledged Entity's formation), or acquire obligations or securities of any other Person, other than in connection with the Pledged Collateral; provided, that the Pledged Entity shall be permitted to dividend or distribute interest received on the Account to the Company, (vii) has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and the Company will not, and will not permit the Pledged Entity, to amend, modify or otherwise change the certificate of formation and operating agreement of the Pledged Entity without the prior written consent of the Holders of a majority in aggregate principal amount of the Securities or in any manner that violates the covenants set forth in this Indenture, until all Pledged Collateral is released, (viii) has maintained and will maintain all of its books, records, financial statements and bank accounts separate from those of the Company and its Affiliates, subsidiaries and constituent parties, (ix) has been, will be, and at all times has held and will hold itself out to the public as, a legal entity separate and distinct from any other entity (including the Company, any other subsidiary, or any Affiliate or constituent party of any of the foregoing) and shall correct any known misunderstanding regarding its status as a separate entity, and (x) has not guaranteed or become obligated for, nor will it guarantee or become obligated for, the debts of any other Person or, except as provided in this Indenture, hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person. The Company represents and warrants that neither the Company nor any subsidiary, Affiliate or constituent party of any of the foregoing has sought or will seek or effect the liquidation, dissolution, winding up, consolidation or merger, in whole or in part, of the Pledged Entity.

SECTION 10.6. *Additional Covenants.*

(a) The Company covenants and agrees with each Holder of Securities that (x) during the Modification Period and/or (y) if an Event of Default shall have occurred and be continuing (other than an Event of Default caused solely by the act, or failure to act, of the Trustee), it shall not (i) pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company's Equity Interests, (ii) vote in favor of or permit or otherwise allow any of its Subsidiaries to declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to or otherwise retire, any shares of any such Subsidiary's preferred stock or other Equity Interests entitling the holders thereof to a stated rate of return (for the avoidance of doubt, whether such preferred stock or other Equity Interests are perpetual or otherwise) other than to the Company, or (iii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank *pari passu* in all respects with or junior in interest to the Securities other than (A) repurchases, redemptions or other acquisitions of Equity Interests of the Company in connection with any employment contract, benefit plan or other similar arrangement in effect prior to the date hereof with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase or similar plan with respect to any Equity Interests or in connection with the issuance of Equity Interest of the Company (or securities convertible into or exercisable for such Equity Interests) as consideration in an acquisition transaction entered into prior to the Event of Default, (B) as a result of an exchange or conversion of any class or series of the Company's indebtedness for any class or series of the Company's Equity Interests, (C) the purchase of fractional interests in Equity Interests of the Company pursuant to the conversion or exchange provisions of such Equity Interests or the security being converted or exchanged, (D) any declaration of a dividend in connection with any Rights Plan, the issuance of rights, Equity Interests or other property under any Rights Plan or the redemption or repurchase of rights pursuant thereto, (E) any dividend in the form of Equity Interests, warrants, options or other rights exercisable for Equity Interests (F) dividends or distributions necessary in order for the Company to maintain its REIT status, provided that any such declaration or payment during the Modification Period shall be in the form of stock to the extent permitted by the Code, or (G) any other transaction consented to in writing by Holders representing a majority in aggregate principal amount of the Securities in their sole discretion.

(b) The Company is presently qualified as a real estate investment trust (a "REIT") under the Internal Revenue Code of 1986 (as the same may be amended from time to time) and no circumstance or event has occurred that would disqualify the Company as a REIT. Subject to the Company's right to merge into an entity that is not a real estate investment trust pursuant to Section 8.1 hereof, the Company agrees to use its commercially reasonable efforts to, at all times meet the requirements to qualify as a REIT for as long as the judgment of the Company's board of directors is that the Company should maintain its status as a REIT.

SECTION 10.7. *Waiver of Covenants.*

The Company may omit in any particular instance to comply with any covenant or condition contained in Section 10.6 if, before or after the time for such compliance, the Holders of at least a majority in aggregate principal amount of the Outstanding Securities shall, by Act of such Holders, 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 in respect of any such covenant or condition shall remain in full force and effect.

SECTION 10.8. *Treatment of Securities.*

The Company will treat the Securities as indebtedness, and the amounts, other than payments of principal, payable in respect of the principal amount of such Securities as interest, for all U.S. federal income tax purposes. All payments in respect of the Securities will be made free and clear of U.S. withholding tax to any beneficial owner thereof that has provided an Internal Revenue Service Form W9 or W 8BEN (or any substitute or successor form) establishing its U.S. or non-U.S. status for U.S. Federal income tax purposes or any other applicable form establishing a complete exemption from U.S. withholding tax.

ARTICLE XI

Redemption of Securities

SECTION 11.1. *Optional Redemption.*

The Company may, at its option, on any Interest Payment Date, on or after April 30, 2011, redeem the Securities in whole at any time or in part from time to time, at a Redemption Price equal to one hundred percent (100%) of the applicable Principal Sum thereof (or of the redeemed portion thereof, as applicable), together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date (the "*Optional Redemption Price*").

SECTION 11.2. *Tax Event Redemption.*

Prior to April 30, 2011, upon the occurrence and during the continuation of a Tax Event, the Company may, at its option, redeem the Securities, in whole but not in part, at a Redemption Price equal to one hundred seven and one half percent (107.5%) of the then applicable Principal Sum thereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date (the "*Tax Redemption Price*").

SECTION 11.3. *Election to Redeem; Notice to Trustee.*

The election of the Company to redeem any Securities, in whole or in part, shall be evidenced by or pursuant to Company Order or Company request. In case of any redemption at the election of the Company, the Company shall, not less than forty-five (45) days and not more than seventy-five (75) days prior to the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such date and of the principal amount of the Securities to be redeemed and provide the additional information required to be included in the notice or notices contemplated by Section 11.5. In the case of any redemption of Securities, in whole or in part, (a) prior to the expiration of any restriction on such redemption provided in this Indenture or the Securities or (b) pursuant to an election of the Company which is subject to a condition specified in this Indenture or the Securities, the Company shall furnish the Trustee with an Officers' Certificate and an Opinion of Counsel evidencing compliance with such restriction or condition.

SECTION 11.4. *Selection of Securities to be Redeemed.*

(a) If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected and redeemed on a pro rata basis not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, *provided*, that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

(b) The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security that has been or is to be redeemed.

(c) The provisions of paragraphs (a) and (b) of this Section 11.4 shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

SECTION 11.5. *Notice of Redemption.*

(a) Notice of redemption shall be given not later than the thirtieth (30th) day, and not earlier than the sixtieth (60th) day, prior to the Redemption Date to the Trustee and each Holder of Securities to be redeemed, in whole or in part (unless a shorter notice period shall be satisfactory to the Trustee).

(b) With respect to Securities to be redeemed, in whole or in part, each notice of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price or, if the Redemption Price cannot be calculated prior to the time the notice is required to be sent, the estimate of the Redemption Price, as calculated by the Company, together with a statement that it is an estimate and that the actual Redemption Price will be calculated on the fifth Business Day prior to the Redemption Date (and if an estimate is provided, a further notice shall be sent of the actual Redemption Price on the date that such Redemption Price is calculated);

(iii) if less than all Outstanding Securities are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the amount of and particular Securities to be redeemed;

(iv) that on the Redemption Date, the Redemption Price will become due and payable upon each such Security or portion thereof, and that any interest (including any Additional Interest) on such Security or such portion, as the case may be, shall cease to accrue on and after said date; and

(v) the place or places where such Securities are to be surrendered for payment of the Redemption Price.

(c) Notice of redemption of Securities to be redeemed, in whole or in part, at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and shall be irrevocable. The notice, if mailed in the manner provided above, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail or any defect in the notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

SECTION 11.6. *Deposit of Redemption Price.*

Prior to 10:00 a.m., New York City time, on the Redemption Date specified in the notice of redemption given as provided in Section 11.5, the Company will deposit with the Trustee or with one or more Paying Agents an amount of money sufficient to pay the Redemption Price of, and any accrued interest (including any Additional Interest) on, all the Securities (or portions thereof) that are to be redeemed on that date.

SECTION 11.7. *Payment of Securities Called for Redemption.*

(a) If any notice of redemption has been given as provided in Section 11.5, the Securities or portion of Securities with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date. On presentation and surrender of such Securities at a Place of Payment specified in such notice, the Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date.

(b) Upon presentation of any Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the Security so presented and having the same Original Issue Date, Stated Maturity and terms.

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

ARTICLE XII

Subordination of Securities

SECTION 12.1. *Securities Subordinate to Senior Debt.*

The Company covenants and agrees, and each Holder of a Security, by its acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article XII, the payment of the principal of and any premium and interest (including any Additional Interest) on each and all of the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Debt.

SECTION 12.2. *No Payment When Senior Debt in Default; Payment Over of Proceeds Upon Dissolution, Etc.*

(a) Subject to the terms of Section 10.5, in the event and during the continuation of any default by the Company in the payment of any principal of or any premium or interest on any Senior Debt (following any grace period, if applicable) when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration of acceleration or otherwise, then, upon written notice of such default to the Company by the holders of such Senior Debt or any trustee therefor, unless and until such default shall have been cured or waived or shall have ceased to exist, no direct or indirect payment (in cash, property, securities, by set-off or otherwise) shall be made or agreed to be made on account of the principal of or any premium or interest (including any Additional Interest) on any of the Securities, or in respect of any redemption, repayment, retirement, purchase or other acquisition of any of the Securities.

(b) In the event of a bankruptcy, insolvency or other proceeding described in clause (d) or (e) of the definition of Event of Default (each such event, if any, herein sometimes referred to as a "*Proceeding*"), all Senior Debt (including any interest thereon accruing after the commencement of any such proceedings) shall, subject to the terms of Section 10.5, first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to any Holder of any of the Securities on account thereof. Any payment or distribution, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment), which would otherwise (but for these subordination provisions) be payable or deliverable in respect of the Securities shall, subject to the terms of Section 10.5, be paid or delivered directly to the holders of Senior Debt in accordance with the priorities then existing among such holders until all Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) shall have been paid in full.

(c) In the event of any Proceeding, after payment in full of all sums owing with respect to Senior Debt, the Holders of the Securities, together with the holders of any obligations of the Company ranking on a parity with the Securities, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid principal of and any premium and interest (including any Additional Interest) on the Securities and such other obligations before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any Equity Interests or any obligations of the Company ranking junior to the Securities and such other obligations. If, notwithstanding the foregoing, any payment or distribution of any character on any security, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment) shall be received by the Trustee or any Holder in contravention of any of the terms hereof and before all Senior Debt shall have been paid in full, such payment or distribution or security shall be received in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior Debt at the time outstanding in accordance with the priorities then existing among such holders for application to the payment of all Senior Debt remaining unpaid, to the extent necessary to pay all such Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) in full. In the event of the failure of the Trustee or any Holder to endorse or assign any such payment, distribution or security, each holder of Senior Debt is hereby irrevocably authorized to endorse or assign the same.

(d) The Trustee and the Holders, at the expense of the Company, shall take such reasonable action (including the delivery of this Indenture to an agent for any holders of Senior Debt or consent to the filing of a financing statement with respect hereto) as may, in the opinion of counsel designated by the holders of a majority in aggregate of principal amount of the Senior Debt at the time outstanding, be necessary or appropriate to assure the effectiveness of the subordination effected by these provisions.

(e) The provisions of this Section 12.2 shall not impair any rights, interests, remedies or powers of any secured creditor of the Company in respect of any security interest the creation of which is not prohibited by the provisions of this Indenture.

(f) The securing of any obligations of the Company, otherwise ranking on a parity with the Securities or ranking junior to the Securities, shall not be deemed to prevent such obligations from constituting, respectively, obligations ranking on a parity with the Securities or ranking junior to the Securities.

SECTION 12.3. *Payment Permitted If No Default.*

Nothing contained in this Article XII or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company, at any time, except during the pendency of the conditions described in paragraph (a) of Section 12.2 or of any Proceeding referred to in Section 12.2, from making payments at any time of principal of and any premium or interest (including any Additional Interest) on the Securities or (b) the application by the Trustee of any moneys deposited with it hereunder to the payment of or on account of the principal of and any premium or interest (including any Additional Interest) on the Securities or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge (in accordance with Section 12.8) that such payment would have been prohibited by the provisions of this Article XII, except as provided in Section 12.8.

SECTION 12.4. *Subrogation to Rights of Holders of Senior Debt.*

Subject to the payment in full of all amounts due or to become due on all Senior Debt, or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Debt, the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this Article XII (equally and ratably with the holders of all indebtedness of the Company that by its express terms is subordinated to Senior Debt of the Company to substantially the same extent as the Securities are subordinated to the Senior Debt and is entitled to like rights of subrogation by reason of any payments or distributions made to holders of such Senior Debt) to the rights of the holders of such Senior Debt to receive payments and distributions of cash, property and securities applicable to the Senior Debt until the principal of and any premium and interest (including any Additional Interest) on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article XII, and no payments made pursuant to the provisions of this Article XII to the holders of Senior Debt by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Debt, and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Debt.

SECTION 12.5. *Provisions Solely to Define Relative Rights.*

The provisions of this Article XII are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Senior Debt on the other hand. Nothing contained in this Article XII or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as between the Company and the Holders of the Securities, the obligations of the Company, which are absolute and unconditional, to pay to the Holders of the Securities the principal of and any premium and interest (including any Additional Interest) on the Securities as and when the same shall become due and payable in accordance with their terms, (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than their rights in relation to the holders of Senior Debt or (c) prevent the Trustee or the Holder of any Security) from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, including filing and voting claims in any Proceeding, subject to the rights, if any, under this Article XII of the holders of Senior Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

SECTION 12.6. *Trustee to Effectuate Subordination.*

Each Holder of a Security by his or her acceptance thereof authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination provided in this Article XII and appoints the Trustee his or her attorney-in-fact for any and all such purposes.

SECTION 12.7. *No Waiver of Subordination Provisions.*

(a) No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or be otherwise charged with.

(b) Without in any way limiting the generality of paragraph (a) of this Section 12.7, the holders of Senior Debt may, at any time and from to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to such Holders of the Securities and without impairing or releasing the subordination provided in this Article XII or the obligations hereunder of such Holders of the Securities to the holders of Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Debt, or otherwise amend or supplement in any manner Senior Debt or any instrument evidencing the same or any agreement under which Senior Debt is outstanding, (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Debt, (iii) release any Person liable in any manner for the payment of Senior Debt and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

SECTION 12.8. *Notice to Trustee.*

(a) The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article XII or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder of Senior Debt or from any trustee, agent or representative therefor; *provided*, that if the Trustee shall not have received the notice provided for in this Section 12.8 at least two Business Days prior to the date upon which by the terms hereof any monies may become payable for any purpose (including, the payment of the principal of and any premium on or interest (including any Additional Interest) on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

(b) The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself or herself to be a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact therefor) to establish that such notice has been given by a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article XII, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XII, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 12.9. *Reliance on Judicial Order or Certificate of Liquidating Agent.*

Upon any payment or distribution of assets of the Company referred to in this Article XII, the Trustee and the Holders of the Securities shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such Proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XII.

SECTION 12.10. *Trustee Not Fiduciary for Holders of Senior Debt.*

The Trustee, in its capacity as trustee under this Indenture, shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article XII or otherwise.

SECTION 12.11. *Rights of Trustee as Holder of Senior Debt; Preservation of Trustee's Rights.*

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XII with respect to any Senior Debt that may at any time be held by it, to the same extent as any other holder of Senior Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

SECTION 12.12. *Article Applicable to Paying Agents*

If at any time any Paying Agent other than the Trustee shall have been appointed by the Trustee and be then acting hereunder, the term "Trustee" as used in this Article XII shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article XII in addition to or in place of the Trustee. For the avoidance of doubt, the Trustee shall not appoint the Company or any affiliate of the Company as Paying Agent hereunder.

* * * *

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

* * * *

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

NEWCASTLE INVESTMENT CORP.

By: /s/ Brian Sigman
Name: Brian Sigman
Title: Chief Financial Officer

(Signatures continue on the next page)

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: /s/ Bill Marshall
Name: Bill Marshall
Title: Vice President

DETERMINATION OF LIBOR

With respect to the Securities, the London interbank offered rate ("*LIBOR*") shall be determined by the Calculation Agent in accordance with the following provisions (in each case rounded to the nearest .000001%):

(1) On the second LIBOR Business Day (as defined below) prior to a Distribution Date after the expiration of the Fixed Rate Period (each such day, a "*LIBOR Determination Date*"), LIBOR for any given security shall for the following interest payment period equal the rate (expressed as a percentage per annum) for U.S. dollar deposits in Europe, for a three (3) month period, that appears on Dow Jones Telerate (as defined in the International Swaps and Derivatives Association, Inc. 2000 Interest Rate and Currency Exchange Definitions) Page 3750, or such other page as may replace such Page 3750, as of 11:00 a.m. (London time) on such LIBOR Determination Date, as reported by Bloomberg Financial Market Commodities News or any successor service. If such rate is superseded on Telerate Page 3750 by a corrected rate before 12:00 noon (London time) on such LIBOR Determination Date, the corrected rate as so substituted will be LIBOR for such LIBOR Determination Date.

(2) If on any LIBOR Determination Date such rate does not appear on Dow Jones Telerate Page 3750 or such other page as may replace such Page 3750, the Calculation Agent shall determine the arithmetic mean of the offered quotations (expressed as a percentage per annum) of the Reference Banks (as defined below) to leading banks in the London interbank market for U.S. dollar deposits in Europe, for a three (3) month period, for an amount determined by the Calculation Agent (but not less than U.S. $1,000,000) by reference to requests for quotations as of approximately 11:00 A.M. (London time) on the LIBOR Determination Date made by the Calculation Agent to the Reference Banks. If on any LIBOR Determination Date at least two of the Reference Banks provide such quotations, LIBOR shall equal such arithmetic mean of such quotations. If on any LIBOR Determination Date only one or none of the Reference Banks provide such quotations, LIBOR shall be deemed to be the arithmetic mean of the offered quotations (expressed as a percentage per annum) that two (2) leading banks in the City of New York selected by the Calculation Agent are quoting on the relevant LIBOR Determination Date for U.S. dollar deposits in Europe, for a three (3) month period, for an amount determined by the Calculation Agent (but not less than U.S. $1,000,000); *provided*, that if the Calculation Agent is required but is unable to determine a rate in accordance with at least one of the procedures provided above, LIBOR shall be LIBOR as determined on the previous LIBOR Determination Date.

(3) As used herein: "*Reference Banks*" means four major banks in the London interbank market selected by the Calculation Agent; and "*LIBOR Business Day*" means a day (a) on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London and (b) is not a Saturday, Sunday or other day on which commercial banking institutions in New York, New York or Wilmington, Delaware are authorized or obligated by law or executive order to be closed.

Officer's Financial Certificate

The undersigned, the [Chairman/Vice Chairman/Chief Executive Officer/President/ Vice President/Chief Financial Officer/Treasurer/Assistant Treasurer] of Newcastle Investment Corp., a Maryland corporation (the "Company"), hereby certifies, pursuant to Section 7.3(b) of the Junior Subordinated Indenture, dated as of April 30, 2009, among the Company and The Bank of New York Mellon Trust Company, National Association, as trustee, that:

[FOR FISCAL YEAR END: Attached hereto, are the audited consolidated financial statements (including the balance sheet, income statement and statement of cash flows, and notes thereto, together with the report of the independent accountants thereon) of the Company and its consolidated subsidiaries for the three years ended [date], 20 _____ except with respect to the balance sheet, which shall be provided for the two years ended [date], 20 _____, and all required financial statements for the year ended [date], 20 _____.**]**

[FOR FISCAL QUARTER END: Attached hereto are the unaudited consolidated financial statements (including the balance sheet and income statement) of the Company and its consolidated subsidiaries and all required financial statements for the fiscal quarter ended [date], 20 _____.**]**

The financial statements fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("GAAP"), the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the date, and for the [quarterly] [annual] period ended [date], 20 _____, and such financial statements have been prepared in accordance with GAAP consistently applied throughout the period involved (expect as otherwise noted therein).

There has been no monetary default with respect to any indebtedness owed by the Company and/or its subsidiaries (other than those defaults cured within 30 days of the occurrence of the same) [, except as set forth below:].

[Insert any exceptions by listing, in detail, the nature of the condition or event causing such noncompliance, the period during which such condition or event has existed and the action(s) the Company has taken, is taking, or proposes to take with respect to each such condition or event.]

IN WITNESS WHEREOF, the undersigned has executed this Officer's Financial Certificate as of this _____ day of _____, 20 _____.

Newcastle Investment Corp.

By: ____
Name:
Title:

Exhibit 4.2

PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT, dated as of April 30, 2009 (this "*Agreement*") is entered into by and between NEWCASTLE INVESTMENT CORP., a Maryland corporation ("*Pledgor*"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, as trustee for the Holders (together with its successors and/or assigns, the "*Trustee*").

Reference is made to that certain Junior Subordinated Indenture dated as of April 30, 2009 (as the same may be supplemented, amended, restated, modified or replaced from time to time, the "*Indenture*"), with respect to the Pledgor's Junior Subordinated Notes due 2035 by and between the Pledgor and the Trustee. Capitalized terms used herein and not defined herein shall have the meanings given to such terms under the Indenture.

RECITALS

A. Pursuant to the terms of the Indenture, Pledgor has entered into this Agreement in order to grant to Trustee a first priority security interest in the Pledged Company Interests and the other Collateral as collateral security for the Obligations.

B. Pledgor is the (i) direct legal and beneficial owner of one hundred percent (100%) of the membership interests (the "*Pledged Company Interests*") in the Pledged Entity and maintains the Controlling ownership interest in the Pledged Entity, as set forth in Schedule I hereto (ii) managing member of the Pledged Entity.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pledgor hereby represents, warrants, covenants and agrees for the benefit of Trustee, as follows:

1. Defined Terms.

(a) For the purposes of this Agreement, the following terms shall have the following meanings:

"Agreement" means this Pledge and Security Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Assignment of Interest" has the meaning ascribed to such term in Section 2(b) hereof.

"Code" means the Uniform Commercial Code from time to time in effect in the State of New York.

"Collateral" has the meaning ascribed to such term in Section 2(a) hereof.

"Confirmation Statement and Instruction Agreement" means the form of document attached as Exhibit E hereto.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. *"Controlled"* and *"Controlling"* shall have correlative meanings.

"*Default Rate*" means the interest rate imposed pursuant to the Indenture with respect to any Defaulted Interest.

"Exchange Agreement" shall mean that certain Exchange Agreement, dated the date hereof, by and between Pledgor, Taberna Preferred Funding IV, Ltd., Taberna Preferred Funding V, Ltd., Taberna Preferred Funding VI, Ltd. and Taberna Preferred Funding VII, Ltd., as the same may be supplemented, amended, restated or otherwise modified.

"Event of Default" shall have the meaning ascribed to such term in Section 10(a).

"Indenture" has the meaning ascribed to such term in the introductory paragraphs hereto.

"Indenture Documents" means, collectively, the Indenture, this Agreement, the Exchange Agreement, the Pledge, Security Agreement and Account Control Agreement and any other documents and instruments entered into pursuant to and/or in connection therewith.

"Issuer" has the meaning ascribed to such term in Section 7(b) hereof.

"Majority Holders" shall mean the Holders of a majority in aggregate principal amount of the Outstanding Securities, provided that any Holder that the Pledgor or any Affiliate of the Pledgor shall not be deemed to be a Majority Holder for purposes hereof and shall not be entitled to any vote or consent provided herein.

"Obligations" shall mean all payment and performance obligations of Pledgor pursuant to the Indenture Documents.

"Operating Agreement" shall mean that certain Limited Liability Company Agreement of Pledgor, dated April 21, 2009, as the same may be modified, amended, restated, supplemented or replaced.

"Participation Proceeds" shall mean the Participation Proceeds, as defined in the Pledge, Security Agreement and Account Control Agreement.

"Participation Interest" shall have the meaning set forth in the Pledge Security Agreement and Account Control Agreement.

"Pledge, Security Agreement and Account Control Agreement" shall mean that certain Pledge, Security Agreement and Account Control Agreement entered into as of the date hereof between the Pledged Entity, the Trustee and The Bank of New York Mellon, a New York banking corporation, as intermediary, and acknowledged and agreed by the Pledgor.

"Pledged Company Interests" has the meaning ascribed to such term in the Recitals.

"Pledged Entity" means NIC TP LLC, a Delaware limited liability company.

"Pledged Entity Organizational Documents" means the certificate of formation and Operating Agreement of Pledged Entity.

"Pledgor" has the meaning ascribed to such term in the introductory paragraph.

"Proceeds" means all "proceeds" as such term is defined in Section 9-102(a)(64) of the Code and, in any event, shall include, without limitation, all dividends or other income with respect to and from the Pledged Company Interests, collections thereon and/or distributions with respect thereto.

"SEC" means the Securities and Exchange Commission.

"Special Damages" has the meaning set forth in Section 24(k).

"Taberna Capital Management, LLC" means Taberna Capital Management, LLC and its any successor and/or assigns as collateral manager of the Holders, as applicable.

"Trustee" has the meaning ascribed to such term in the introductory paragraph.

"*Trustee Direction*" has the meaning ascribed to such term in Section 24(f).

(b) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section, subsection, schedule and exhibit references are to this Agreement unless otherwise specified. The word "including" when used in this Agreement shall be deemed to be followed by the words "but not limited to." Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

2. Pledge; Grant of Security Interest; Delivery of Collateral.

(a) Pledgor hereby pledges and grants to Trustee, for the benefit of the Holders, as collateral security for the prompt and complete payment and performance when due of the Obligations, a first priority security interest in and to all of Pledgor's right, title and interest to the following, whether now owned by Pledgor or hereafter acquired, and whether now existing or hereafter coming into existence (collectively, the *"Collateral"*):

(i) all membership interest in the Pledged Entity, including, without limitation, the Pledged Company Interests, together with any certificates evidencing the same;

(ii) all of the capital of Pledgor in the Pledged Entity and any and all profits, losses, distributions and allocations attributable thereto, as well as the proceeds of any distribution thereof, whether arising under the terms of the Pledged Entity Organizational Documents or otherwise;

(iii) (a) all securities, moneys or property representing dividends or interest on any of the Pledged Company Interests, or representing a distribution in respect of the Pledged Company Interests, including, without limitation, all dividends or distributions resulting from a split-up, revision, reclassification, exchange, substitution or other like change of the Pledged Company Interests or otherwise received in exchange therefor, and (b) any warrants, rights or options issued to the Pledgor, in respect of the Pledged Company Interests;

(iv) Intentionally Omitted.

(v) all right, title and interest of Pledgor in, to and under the Pledged Entity Organizational Documents, including, without limitation, (A) all rights of Pledgor to receive moneys or distributions with respect to the Pledged Company Interests due and to become due under or pursuant to the Pledged Entity Organizational Documents, (B) all rights of Pledgor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Pledged Company Interests, (C) all claims of Pledgor for damages arising out of or for breach of or default under the Pledged Entity Organizational Documents, (D) any right of Pledgor to perform under the Pledged Entity Organizational Documents, and to compel performance and otherwise exercise all rights and remedies thereunder, and (E) all of Pledgor's right to participate in the operation and/or management of the Pledged Entity; and

(vi) Intentionally Omitted.

(vii) all Proceeds of any of the foregoing property of Pledgor, including, without limitation, any proceeds of insurance thereon.

(b) All certificates or instruments now or hereafter at any time representing or evidencing the Pledged Entity Interests shall be delivered to and held by Trustee on behalf of the Holders pursuant hereto and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer in blank, stock powers endorsed by Pledgor in blank or assignments in blank, all in form and substance reasonably satisfactory to the Majority Holders. Upon the occurrence and during the continuance of an Event of Default, Trustee shall have the right, at any time, as directed by the Majority Holders, and without further notice to Pledgor, to transfer to or to register in the name of Trustee or its nominee any or all of the Collateral. Prior to or concurrently with the execution and delivery of this Agreement, Pledgor shall deliver to Trustee an assignment of ownership interest endorsed by Pledgor in blank (an *"Assignment of Interest"*), in the form set forth on Exhibit B hereto, for the Pledged Company Interests, transferring all of such Pledged Company Interests in blank, duly executed by Pledgor and undated. Trustee shall have the right, as directed by the Majority Holders, upon the occurrence and during the continuance of an Event of Default and without notice to Pledgor, to transfer to, and to designate on any such Assignment of Interest, any Person to whom the Pledged Company Interests, or any portion thereof, are sold in accordance with the provisions hereof. In addition, Trustee shall have the right at any time, as directed by the Majority Holders in their discretion, to exchange any Assignment of Interest representing or evidencing any Pledged Company Interest or any portion thereof for one or more additional or substitute Assignments of Interest representing or evidencing smaller or larger percentages of the Pledged Company Interest represented or evidenced thereby, subject to the terms thereof.

(c) This Agreement is executed only as security for the Obligations and, therefore, the execution and delivery of this Agreement shall not subject Trustee to, or transfer or pass to Trustee, or in any way affect or modify, any liabilities of Pledgor or the Pledged Entity, including under the Pledged Entity Organizational Documents, as applicable. In no event shall the acceptance of this Agreement by Trustee or the exercise by Trustee of any rights hereunder or assigned hereby constitute an assumption by Trustee of any liability or obligation of Pledgor or Pledged Entity or in respect of any Pledged Company Interests to, under or in connection with the Pledged Entity Organizational Documents or any other agreement or instrument to which either is a party.

3. Obligations Unconditional. The obligations of Pledgor hereunder are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Obligations pursuant to the Indenture or any other Indenture Documents, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense, it being the intent of this Section 3 that the obligations of Pledgor hereunder shall be absolute and unconditional under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Pledgor hereunder:

(i) at any time or from time to time, without notice to Pledgor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of the Indenture Documents shall be done or omitted;

(iii) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under the Indenture Documents shall be waived or any other guarantee of any of the Obligations or any security or collateral therefor shall be terminated, released or exchanged in whole or in part or otherwise dealt with; or

(iv) any lien or security interest granted to, or in favor of Trustee as security for any of the Obligations shall fail to be perfected or shall be released.

4. <u>Reinstatement.</u> The obligations of Pledgor under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Pledgor in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise and Pledgor agrees that it will indemnify Trustee, the Holders and Taberna Capital Management, LLC on demand for all reasonable costs and expenses (including, without limitation, reasonable fees of counsel) incurred by Trustee, such Holders and/or Taberna Capital Management, LLC in connection with such rescission or restoration.

5. <u>Representations and Warranties.</u> Pledgor represents and warrants as of the date hereof and covenants that:

(a) <u>Existence/Formation</u>. Pledgor and Pledged Entity: (i) are a Maryland corporation and a Delaware limited liability company, respectively, duly organized or formed, respectively, and validly existing under the laws of their respective states of organization; (ii) have all requisite power, and all governmental licenses, authorizations, consents and approvals necessary, to own their respective assets and carry on their respective business as now being or as proposed to be conducted; and (iii) are each qualified to do business in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary. Pledged Entity is, has been, and will continue to be, duly formed or organized and existing as a special-purpose entity in accordance with Section 10.5 of the Indenture.

(b) <u>Litigation</u>. There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending and served or, to the best knowledge of Pledgor, threatened against Pledgor or Pledged Entity or with respect to any portion of the Collateral, the Participation Proceeds or the Participation Interest, except as set forth in Schedule II.

(c) <u>No Breach</u>. None of the execution and delivery of this Agreement or any other Indenture Document to which Pledgor or Pledged Entity is a party, the consummation of the transactions herein or therein contemplated, or compliance with the terms and provisions hereof or thereof will (i) conflict with or result in a breach of, or require any consent (except such consents as have been obtained) under, the organizational documents of Pledgor or Pledged Entity, or (ii) violate any applicable law or regulation, or any order, writ, injunction or decree of any court or Governmental Authority, or any agreement or instrument to which Pledgor or Pledged Entity is a party or by which either of their assets or properties are bound or to which they are subject, or constitute a default under any such agreement or instrument or (iii) (except for the lien arising pursuant to this Agreement or the other Indenture Documents or as otherwise permitted under the terms of the Indenture Documents) result in the creation or imposition of any lien upon any of the revenues or assets of Pledgor or Pledged Entity pursuant to the terms of any such agreement or instrument, except in the case of clause (ii) and (iii), for such violations, defaults or liens which would not, singly or in the aggregate, have a material adverse affect on the Pledgor, the Pledged Entity or the Collateral.

(d) Necessary Action. Pledgor has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Pledgor of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by Pledgor and constitutes its legal, valid and binding obligation, enforceable in accordance with its terms, subject to bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights in general and to general principles of equity.

(e) Approvals. No authorizations, approvals or consents of any Person or any Governmental Entity, and no filings and registrations with, any governmental or regulatory authority or agency are necessary for (i) the execution, delivery or performance by Pledgor of this Agreement or for the validity or enforceability thereof, (ii) the grant by Pledgor of the assignments and security interests granted hereby, or the pledge by Pledgor of the Collateral pursuant hereto, (iii) the perfection or maintenance of the pledge, assignment and security interest created hereby except for the filing of financing statements under the Code, or (iv) the exercise by Trustee of all rights and remedies in respect of the Collateral pursuant to this Agreement. Other than consents that have been received in writing and delivered to the Holders, no approvals or counsels of any Person (including, without limitation, under the Participation Agreement) are required in connection with (x) the transfer of the Participation Interest from Pledgor to the Pledged Entity or (y) the pledge and grant of security interests by the Pledged Entity under the Pledge, Security Agreement and Account Control Agreement.

(f) Ownership. Pledgor owns the Collateral, free and clear of all pledges, liens, hypothecations, security interests, charges, options or other encumbrances whatsoever, except the lien and security interest created by this Agreement. Pledgor shall not sell, assign, transfer or otherwise dispose of, or grant any option with respect to, the Collateral. The Pledged Company Interests are not and will not be subject to any contractual restriction upon the transfer thereof (except for any such restrictions contained herein, under the applicable organizational documents and under applicable federal and state securities laws). The Pledged Company Interests directly or indirectly constitute all of the issued and outstanding equity interests in the Pledged Entity, and there are no options, warrants or rights held by any other party to acquire any interests in the Pledged Entity. Pledgor shall not permit the Pledged Entity to sell, assign, transfer, pledge, mortgage, encumber or otherwise dispose of or negotiate, or grant any option with respect to, the Participation Interest or the Participation Proceeds, except as otherwise expressly permitted under the terms of the Indenture and the Pledge, Security Agreement and Account Control Agreement.

(g) Principal Place of Business, Name and State of Organization. Pledgor's principal place of business is, and for the immediately preceding four (4) months, if applicable, has been, the following address for Pledgor: 1345 Avenue of the Americas, New York, NY 10105. The exact name of Pledgor is Newcastle Investment Corp..

(h) No Securities; Trading or Accounts. The Pledged Company Interests are not, and will not be, dealt in or traded on any securities exchanges or securities markets, and are not and will not be, held in any "securities account" as defined in Article 8 of the Code.

(i) Valid Security Interest. This Agreement creates a valid security interest in the Collateral, securing the Obligations, and upon (i) the filing in the appropriate filing offices of the financing statements to be delivered pursuant to this Agreement and the Pledge, Security Agreement and Account Control Agreement, and (ii) the delivery to and possession by Trustee of the certificates, if any, representing the Pledged Company Interests, such security interest will be a perfected, first priority security interest, and all filings and other actions necessary to perfect such security interest will have been duly taken.

(j) Delivery. Pledgor has delivered to Trustee (i) a true, correct and complete copy of the Pledged Entity Organizational Documents, and (ii) the originals of all certificates, instruments or writings representing the Pledged Company Interests. There are and shall be no other agreements governing the formation, organization or terms of the equity interests in the Pledged Entity. The Pledged Entity Organizational Documents shall not be amended without the prior written consent of Trustee, at the direction of the Majority Holders (which consent will not be unreasonably withheld).

(k) No Bankruptcy Filing. Neither Pledgor nor Pledged Entity is contemplating either the filing of a petition under any state or federal bankruptcy or insolvency laws or the liquidation of all or any material portion of its assets (other than, with respect to Pledgor, in the ordinary course of business), no such action or filing is pending against Pledgor or Pledged Entity by any Person and, to the best knowledge of Pledgor, no Person is contemplating the filing of any such petition or action against Pledgor or Pledged Entity.

(l) Full and Accurate Disclosure. No statement of fact made by or on behalf of Pledgor in this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not materially misleading.

(m) Acknowledgment and Consent. Pledgor has delivered to Trustee or shall promptly deliver to Trustee an acknowledgment and consent executed by the Pledged Entity in the form of Exhibit C attached hereto and made a part hereof.

6. Covenants. Pledgor covenants and agrees with Trustee that, from and after the date of this Agreement until the Obligations have been satisfied in full or this Agreement is released as provided in the Indenture:

(a) If Pledgor shall, as a result of its ownership of the Pledged Company Interests, become entitled to receive or shall receive any equity interest certificate or stock certificate, as applicable (including, without limitation, any certificate representing a dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights, whether in addition to, in substitution of, as a conversion of, or in exchange for any interests comprising the Pledged Company Interests, or otherwise in respect thereof, Pledgor shall accept the same as Trustee's agent, hold the same in trust for Trustee and deliver the same forthwith to Trustee in the exact form received, duly endorsed by Pledgor to Trustee, if required, together with an undated Assignment of Interest covering such certificate duly executed in blank and with, if Trustee so requests, signature guaranteed, to be held by Trustee hereunder as additional security

for the Obligations. Any sums paid to Pledgor upon or in respect of the Pledged Company Interests, including, without limitation, upon the liquidation or dissolution of the Pledged Entity shall be paid over to Trustee to be held by Trustee hereunder as additional security for the Obligations, and in case any distribution of capital shall be made on or in respect of the Pledged Company Interests or any property shall be distributed upon or with respect to the Pledged Company Interests, including, without limitation, pursuant to the recapitalization or reclassification of the capital of Pledged Entity or pursuant to the reorganization thereof, the property so distributed shall be delivered to Trustee to be held by Trustee, subject to the terms hereof, as additional security for the Obligations. If any sums of money or property are so paid or distributed in respect of the Pledged Company Interests, such sums and/or property shall be received by Pledgor, Pledgor shall pay such sums over to the Trustee and, until such money or property is paid or delivered to Trustee, shall hold such money or property in trust for Trustee, segregated from other funds of Pledgor, as additional security for the Obligations.

(b) Except as provided in the Indenture, without the prior written consent of Trustee, at the direction of the Majority Holders, Pledgor shall not, directly or indirectly (i) vote to enable, or take any other action to permit Pledged Entity to issue any equity interests or to issue any other securities convertible into or granting the right to purchase or exchange such securities for any equity interests in Pledged Entity, (ii) except as permitted by the Indenture, sell, assign, transfer, exchange, encumber, pledge, negotiate or otherwise dispose of, or grant any option with respect to, the Collateral, or permit the Pledged Entity to sell, convey, transfer, assign, exchange, encumber, pledge, negotiate or otherwise dispose of, or grant any option with respect to, the Participation Interest or the Participation Proceeds, or (iii) create, incur, authorize or permit to exist any lien or option in favor of, or any claim of any Person with respect to, any of the Collateral, or any interest therein, except for the liens provided for by this Agreement and the Indenture Documents, (iv) permit Pledged Entity to (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, or (b) engage in any business activity not related to the ownership and operation of the Participation Interest, including the Participation Proceeds, or (c) except as expressly permitted under the terms of the Indenture modify or amend in any manner, or cancel or terminate or permit or consent to the cancellation or termination of, any rights or obligations under the Mezzanine Loan Agreement, the Participation Agreement, Participation Interest including the Participation Proceeds, or consent to same. Pledgor shall defend the right, title and interest of Trustee in and to the Collateral against the claims and demands of all Persons whomsoever. Any interest, securities, lien or option with respect to any Pledged Company Interests issued in violation of this Agreement shall be void *ab initio.*

(c) At any time and from time to time, upon the request of Trustee or Taberna Capital Management, LLC, and at the sole expense of Pledgor, Pledgor shall promptly and duly give, execute, deliver, file and/or record such further instruments and documents and take such further actions as Trustee or Taberna Capital Management, LLC may reasonably request for the purposes of obtaining, creating, perfecting, validating or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, filing UCC financing or continuation statements. Pledgor hereby authorizes Trustee to file any such financing statement or continuation statement without the signature of Pledgor to the extent permitted by law. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any promissory note, other instrument or chattel paper, such note, instrument or chattel paper shall be promptly delivered to Trustee, duly endorsed in a manner reasonably satisfactory to the Holders and the Trustee, to be held as Collateral pursuant to this Agreement.

(d) Pledgor will not create, incur or permit to exist, will defend the Pledged Company Interests and the other Collateral against, and will take all such other action as is necessary to remove, any lien or claim on or to the Pledged Company Interests or any of the other Collateral, other than the liens created hereby and by the Indenture Documents, and Pledgor will defend the right, title and interest of Trustee in, to and under the Pledged Company Interests and the other Collateral against the claims and demands of all Persons whomsoever.

(e) Pledgor will furnish or cause to be furnished to Trustee and to Taberna Capital Management, LLC from time to time statements and schedules further identifying and describing the Collateral and any reports in connection with the Mezzanine Loan, the Participation Agreement, and/or the Participation Interest Collateral as Trustee or Taberna Capital Management, LLC may reasonably request, all in reasonable detail, to the extent the requested information is in the possession of or reasonably available to the Pledgor or the Pledged Entity.

(f) Pledgor will not, unless (i) it shall have given ten (10) days' prior written notice to such effect to Trustee, and (ii) all action reasonably necessary or advisable, in Trustee's opinion, to protect and perfect the liens and security interests intended to be created hereunder with respect to the Collateral shall have been taken, do any of the following: (A) change the location of its principal place of business from that specified in Section 5(g) hereof, (B) change its name or identity, (C) reorganize or reincorporate under the laws of a jurisdiction other than the State of Maryland, (D) permit the Pledged Entity to reorganize or reincorporate under the laws of a jurisdiction other than the State of Delaware or (D) take or permit any other action which would render any filed financing statement misleading, incorrect or ineffective.

(g) Pledgor shall pay, and save Trustee, the Holders and Taberna Capital Management, LLC harmless from, any and all liabilities with respect to or resulting from any delay in paying any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(h) Pledgor shall not, directly or indirectly, without the prior written consent of Trustee, at the direction of the Majority Holders (which consent will not be unreasonably withheld), waive, alter, amend, modify, supplement or change in any way, or release, subordinate, terminate or cancel in whole or in part, or give any consent to do any of the foregoing under, any of the instruments, documents, policies or agreements constituting or governing the Collateral (including, without limitation, the Pledged Entity Organizational Documents or any of the rights or interests of Pledgor as party, holder, or beneficiary thereunder). Pledgor agrees that all rights to do any and all of the foregoing have been assigned to Trustee for the benefit of the Holders, but Pledgor agrees that, upon request from Trustee, at the direction of the Majority Holders, from time to time, Pledgor shall do any of the foregoing or shall join Trustee in doing so or shall confirm the right of Trustee to do so and shall execute such instruments and undertake such actions as the Holders and/or the Trustee may reasonably request in connection therewith.

(i) Pledgor shall not, without the prior written consent of Trustee, at the direction of the Majority Holders, make any election, compromise, adjustment or settlement in respect of any of the Collateral or, except as expressly permitted under the terms of the Indenture, permit the Pledged Entity to make any election, compromise, adjustment or settlement in respect of the Participation Interest (including the Participation Proceeds).

(j) Intentionally Omitted.

(k) Pledgor hereby authorizes Trustee to: (i) subject to the terms and provisions of this Section 6 hereof, perform any and all other acts which Trustee in good faith deems necessary for the protection and preservation of the Collateral or its value or Trustee's security interest therein, including, without limitation, transferring, registering or arranging for the transfer or registration of the Collateral to or in Trustee's own name and, at any time during the existence of an Event of Default, receiving the income therefrom as additional security for the Obligations, and (ii) pay any charges or expenses, including, without limitation, reasonable attorneys' fees, which Trustee or the Majority Holders deem necessary for the foregoing purpose, but without any obligation on the part of Trustee or the Holders to do so (and any amounts so paid shall be payable by Pledgor within ten (10) days after written demand together with interest thereon at the Default Rate from the date expended by Trustee, or the Holders until paid). If any additional portion of the Pledged Company Interests are certificated, then upon delivery of the certificated Pledged Company Interests to Trustee, Pledgor authorizes Trustee to store, deposit and safeguard the Pledged Company Interests. Any obligation of Trustee for the reasonable care of any of the Collateral in Trustee's possession shall be limited to the same degree of care that Trustee uses for similar property pledged to Trustee by other persons.

(l) Pledgor waives (i) all rights to require Trustee to proceed against any other person, entity or collateral or to exercise any remedy set forth herein or in any other agreement, (ii) the defense of the statute of limitations in any action upon any of the Obligations, (iii) any right of subrogation or interest in the Obligations or Collateral until all Obligations have been satisfied in full, (iv) any rights to notice of any kind or nature whatsoever, unless specifically required in this Agreement or non-waivable under any applicable law, and (v) if any of the Pledged Company Interests are or become certificated, to the extent permissible, its rights under Section 9-207 of the Code. Pledgor agrees that the Collateral may be released, substituted or added in whole or in part, without releasing or otherwise affecting the liability of Pledgor, the pledge and security interests granted hereunder, or this Agreement. Trustee is entitled to all of the benefits of a secured party set forth in Section 9-207 of the Code.

7. Certain Understandings of Parties; Registration of Pledge; Control of Collateral, Etc.

(a) Intentionally Omitted.

(b) Notwithstanding the foregoing, to better assure the perfection of the security interest of Trustee in the Pledged Company Interests, concurrently with the execution and delivery of this Agreement, Trustee, at the direction of the Majority Holders, shall send to the Pledged Entity written instructions in the form of Exhibit D attached hereto and made a part hereof, and Pledgor shall cause Pledged Entity to, and Pledged Entity shall deliver to Trustee the Confirmation Statement and Instruction Agreement in the form of Exhibit E attached hereto and made a part hereof, pursuant to which Pledged Entity will confirm that it has registered the applicable pledge effected by this Agreement on its books and agrees to comply with the instructions of Trustee in respect of the applicable Pledged Company Interests without further consent of Pledgor or any other Person. From time to time, Trustee, at the direction of the Majority Holders, shall promptly provide replacement written instructions in the form of Exhibit D attached hereto to Pledged Entity and Pledgor shall cause Pledged Entity to, and Pledged Entity shall, deliver to Trustee the Confirmation Statement and Instruction Agreement in the form of Exhibit E attached hereto to each assignee or collateral assignee of Trustee, as reasonably requested by Trustee, at the direction of the Majority Holders. Notwithstanding anything to the contrary contained in this paragraph, neither the written instructions nor the Confirmation Statement and Instruction Agreement shall be construed as expanding the rights of Trustee, at the direction of the Majority Holders, to give instructions with respect to the Collateral beyond such rights set forth in this Agreement.

8. Cash Dividends; Voting Rights. Notwithstanding anything herein to the contrary, until an Event of Default shall have occurred and be continuing, Pledgor shall be permitted to receive all distributions or cash dividends allocable to the Pledged Company Interests paid in the normal course of business of Pledged Entity and to exercise all voting and other member or shareholder rights with respect to the Pledged Company Interests, provided that no vote shall be cast or right exercised or other action taken which would impair the Collateral or would be inconsistent with or result in any violation of any provision of the Indenture Documents. Any vote that would result in a change in or violation of the special purpose entity provisions or any related provisions of the Pledged Entity Organizational Document shall require the consent of the Majority Holders, not to be unreasonably withheld. Upon the occurrence and during the continuance of an Event of Default, all such powers, rights and remedies permitted Pledgor above shall cease.

9. Rights of Trustee.

(a) If an Event of Default shall occur and be continuing, Trustee shall have the right to receive and to apply, as directed by the Majority Holders, any and all income, cash dividends, distributions, proceeds or other property received or paid in respect of the Collateral and make application thereof to the Obligations as provided in the Indenture. If an Event of Default shall occur and be continuing, then all Pledged Company Interests, at Trustee's direction, if and as directed by the Majority Holders, shall be registered in the name of Trustee or its nominee (if not already so registered), and Trustee or its nominee may thereafter, at the direction of the Majority Holders, exercise (i) all voting and other member rights with respect to the Pledged Company Interests and (ii) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to the Pledged Company Interests as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Pledged Company Interests upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the organizational structure of Pledged Entity, or upon the exercise by Pledgor or Trustee of any right, privilege or option pertaining to the Pledged Company Interests, and in connection therewith, the right to deposit and deliver any and all of the Pledged Company Interests with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as the Majority Holders may determine), all without liability except to account for property actually received by it, but Trustee shall have no duty to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(b) The rights of Trustee under this Agreement shall not be conditioned or contingent upon the pursuit by Trustee of any right or remedy against Pledgor or against any other Person which may be or become liable in respect of all or any part of the Obligations or against any other security therefor, guarantee thereof or right of offset with respect thereto. Trustee shall not be liable for any failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so, nor shall Trustee be under any obligation, except at the direction of the Majority Holders in their discretion, to sell or otherwise dispose of any Collateral upon the request of Pledgor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof.

(c) Upon satisfaction in full of the Obligations as certified to the Trustee by the Majority Holders, or upon satisfaction and discharge of the Indenture in accordance with its terms, or as otherwise expressly provided under the terms of the Indenture, (i) Trustee's rights under this Agreement shall terminate; (ii) Trustee's security interest in the Collateral automatically shall be released and terminated without any further action, (iii) Trustee, at the direction of the Majority Holders, and at the sole cost and expense of Pledgor, shall execute and deliver to Pledgor UCC-3 termination statements or similar documents and agreements reasonably requested by Pledgor to terminate all UCC-1 financing statements naming Trustee as secured party and (iv) Trustee shall deliver to Pledgor all certificates, instruments or documents held by Trustee that constitute Collateral.

(d) Pledgor authorizes Trustee, at any time and from time to time, to execute, in connection with any sale provided for herein, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

(e) The powers conferred on Trustee hereunder are solely to protect Trustee's interest in the Collateral and shall not impose any duty upon Trustee to exercise any such powers, except at the direction of the Majority Holders in their discretion. Trustee shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither Trustee, any holder of the Securities or Taberna Capital Management, LLC nor any of their respective officers, directors, members, employees or agents shall be responsible to Pledgor for any act or failure to act hereunder, except for its or their respective bad faith, gross negligence or willful misconduct.

(f) If Pledgor fails to perform or comply with any of its agreements contained herein and Trustee, at the direction of the Majority Holders, as provided for by the terms of this Agreement and/or the Indenture, shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, and the expenses (including, without limitation, reasonable attorneys' fees) of Trustee incurred in connection with such performance or compliance, together with interest at the Default Rate, shall be payable by Pledgor to Trustee on demand and shall constitute obligations secured hereby.

10. Events of Default and Remedies.

(a) The occurrence of any of the events identified in this Agreement, the Indenture or the Indenture Documents as an "Event of Default," any breach of the representations or warranties contained herein or in the Indenture Documents and/or the failure of Pledgor to comply with the terms and provisions of this Agreement shall each be an *"Event of Default"* hereunder.

(b) Upon the occurrence and during the continuance of an Event of Default, Trustee, if and as directed by the direction the Majority Holders, shall, in addition to all other rights and remedies granted in this Agreement or in any other Indenture Document:

(i) exercise all rights and remedies of a secured party under the Code (whether or not the Code is in effect in the jurisdiction where the rights and remedies are asserted) and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted, including, without limitation, the right, to the maximum extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Collateral as if Trustee were the sole and absolute owner thereof (and Pledgor agrees to take all such action as may be appropriate to give effect to such rights);

(ii) make any reasonable compromise or settlement deemed desirable with respect to any of the Collateral and may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, any of the Collateral;

(iii) in its discretion, in its name or in the name of Pledgor or otherwise, demand, sue for, collect, direct payment of or receive any money or property at any time payable or receivable on account of or in exchange for any of the Collateral, but Trustee, except to the extent so directed by the Majority Holders in their discretion, shall be under no obligation to do so; and

(iv) without limiting the generality of the foregoing clause (iii) above, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below or otherwise required hereby) to or upon Pledgor, Pledged Entity or any other Person (all and each of which demands, presentments, protests, advertisements and notices, or other defenses, are hereby waived to the extent permitted under applicable law), forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or forthwith sell, assign, give option or options to purchase or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, in the over-the-counter market, at any exchange, broker's board or office of Trustee or elsewhere upon such terms and conditions as Trustee may deem advisable and at such prices as the Majority Holders may deem best in their sole discretion, for cash or on credit or for future delivery without assumption of any credit risk; provided, however, that Trustee shall provide Pledgor with not less than ten (10) days written notice prior to conducting any public or private sale of the Collateral, and Pledgor hereby agrees and stipulates that such notice shall be deemed to be commercially reasonable notice in satisfaction of the requirements of

the Code. In the event Trustee shall be directed to sell all or any part of the Collateral by the Majority Holders, the Trustee may sell such Collateral without giving any representations or warranties of title or the like and shall be permitted to specifically disclaim any representations and warranties of title or the like. Trustee, at the direction of the Majority Holders, shall have the right, without notice or publication, to adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for such sale, and any such sale may be made at any time or place to which the same may be adjourned without further notice. Trustee, at the direction of the Majority Holders, or the Holders, shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption of Pledgor, which right or equity of redemption is hereby waived and released. Trustee, at the direction of the Majority Holders, shall apply any Proceeds from time to time held by it and the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of Trustee hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, in such order as the Majority Holders may elect, and only after such application and after the payment by Trustee of any other amount required by any provision of law, including, without limitation, Sections 9-610 and 9-615 of the Code, need Trustee account for the surplus, if any, to Pledgor. To the extent permitted by applicable law, Pledgor waives all claims, damages and demands it may acquire against Trustee, the Holders and Taberna Capital Management, LLC arising out of the exercise by Trustee of any of its rights hereunder.

(c) The rights, powers, privileges and remedies of Trustee under this Agreement are cumulative and shall be in addition to all rights, powers, privileges and remedies available to Trustee at law or in equity. All such rights, powers and remedies shall be cumulative and may be exercised successively or concurrently without impairing the rights of Trustee hereunder.

11. <u>Private Sales.</u>

(a) Pledgor recognizes that Trustee may be unable to effect a public sale of any or all of the Pledged Company Interests by reason of certain prohibitions contained in the Securities Act of 1933, as amended, and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Pledgor acknowledges and agrees that any such private sale may result in prices and other terms less favorable to Trustee than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of being a private sale. Trustee shall be under no obligation to delay a sale of any of the Pledged Company Interests for the period of time necessary to permit Pledged Entity to register such securities for public sale under the Securities Act of 1933, as amended, or under applicable state securities laws, even if Pledged Entity would agree to do so.

(b) Pledgor further shall use its best efforts to do or cause to be done all such other acts as may be reasonably necessary to make any sale or sales of all or any portion of the Pledged Company Interests pursuant to this Section 11 valid and binding and in compliance with any and all other requirements of applicable law. Pledgor further agrees that a breach of any of the covenants contained in this Section 11 will cause irreparable injury to Trustee and the Holders, that Trustee and the Holders have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 11 shall be specifically enforceable against Pledgor, and Pledgor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants.

(c) Neither Trustee, the Holders nor Taberna Capital Management, LLC shall incur any liability as a result of Trustee's sale of any Collateral, or any part thereof, at any private sale conducted in a commercially reasonable manner, it being agreed that some or all of the Collateral is or may be of one or more types that threaten to decline speedily in value or that are not customarily sold in a recognized market. Pledgor hereby waives any claims against Trustee, the Holders and Taberna Capital Management, LLC arising by reason of the fact that the price at which any of the Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Obligations, even if Trustee, at the direction of the Holders, accepts the first offer received and does not offer any Collateral to more than one offeree, absent any bad faith, gross negligence or willful misconduct by such parties.

(d) Pledgor has been advised that SEC staff personnel have issued various No-Action Letters describing procedures which, in the view of the SEC staff, permit a foreclosure sale of securities to occur in a manner that is public for purposes of Article 9 of the Code, yet not public for purposes of Section 4(2) of the Securities Act of 1933, as amended. The Code permits Pledgor to agree on the standards for determining whether Trustee has complied with its obligations under Article 9 of the Code. To the extent permitted by applicable law, Pledgor and Pledged Entity specifically agree (i) that neither of them shall raise any objection to Trustee's or any holder of the Securities' purchase of the Pledged Company Interests (through bidding on the obligations or otherwise), and (ii) that a foreclosure sale conducted in conformity with the principles set forth in the aforementioned No-Action Letters (A) shall be considered to be a "public" sale for purposes of the Code; (B) will be considered commercially reasonable notwithstanding that Trustee (or any holder of the Securities, as applicable) has not registered or sought to register the Pledged Company Interests under the Securities Act of 1933, as amended, or under applicable state securities laws, even if Pledgor or Pledged Entity agrees to pay all costs of the registration process; and (C) shall be considered to be commercially reasonable notwithstanding that Trustee, or any holder of the Securities, purchases the Pledged Company Interests at such a sale.

(e) Pledgor agrees that Trustee shall not have any general duty or obligation to make any effort to obtain or pay any particular price for any Pledged Company Interests sold by Trustee pursuant to this Agreement. Trustee, may, at the direction of the Majority Holders in their discretion, among other things, accept the first offer received, or decide to approach or not to approach any potential purchasers. Without in any way limiting Trustee's right to conduct a foreclosure sale in any manner which is considered commercially reasonable, Pledgor hereby agrees that any foreclosure sale conducted in accordance with the following provisions shall be considered a commercially reasonable sale and hereby irrevocably waives any right to contest any such sale:

(i) Trustee conducts the foreclosure sale in the State of New York;

(ii) The foreclosure sale is conducted in accordance with the laws of the State of New York;

(iii) Not less than ten (10) days in advance of the foreclosure sale, Trustee notifies Pledgor at the addresses set forth herein of the time and place of such foreclosure sale;

(iv) The foreclosure sale is conducted by an auctioneer licensed in the State of New York and is conducted in front of the New York Supreme Court located in New York City, New York or such other New York State Court in the City and County of New York having jurisdiction over the Collateral on any Business Day between the hours of 9 a.m. and 5 p.m.;

(v) The notice of the date, time and location of the foreclosure sale is published in the *New York Times* or *The Wall Street Journal* (or such other newspaper widely circulated in New York, New York) and the *Wilmington News Journal* (or such other daily newspaper widely circulated in the State of Delaware) for seven (7) consecutive days prior to the date of the foreclosure sale; and

(vi) Trustee sends notification of the foreclosure sale to all secured parties, if any, identified as a result of a search of the UCC financings statements filed in the filing offices located in the States of Maryland, Delaware (if any) and New York conducted not later than twenty (20) days and not earlier than thirty (30) days before such notification date.

12. Limitation on Duties Regarding Collateral. Trustee's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the Code or otherwise, shall be to deal with it in the same manner as Trustee deals with similar securities and property for its own account. Neither Trustee nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of Pledgor, Pledged Entity or otherwise.

13. Limitation on Responsibility of the Trustee. (a) Subject to the terms of the Indenture, the Trustee will have no responsibility under this Agreement other than to perform its obligations hereunder in good faith without willful malfeasance, gross negligence or reckless disregard of its duties hereunder. The Trustee shall incur no liability to anyone in acting upon any signature, instrument, statement, notice, resolution, request, direction, consent, order, certificate, report, opinion, bond or other document or paper (whether delivered by telecopy, electronic mail, courier service or otherwise) reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. Subject to the terms of the Indenture with respect to the Holders, neither the Trustee nor any of its affiliates, directors, officers, shareholders, agents or employees will be

liable to the Pledged Entity, the Pledgor, the Holders or any other Person, except by reason of acts or omissions constituting willful misfeasance, gross negligence or reckless disregard of the Trustee's obligations hereunder. Anything in this Agreement notwithstanding, in no event shall the Trustee be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of such loss or damage and regardless of the form of action. The Pledgor will reimburse, indemnify and hold harmless the Trustee and its affiliates, directors, officers, shareholders, agents and employees with respect to all expenses, losses, damages, liabilities, demands, charges and claims of any nature (including the reasonable fees and expenses of counsel and other experts) in respect of or arising from any acts or omissions by the Trustee, its affiliates, directors, officers, shareholders, agents or employees hereunder and without willful misfeasance, or negligence in the performance of, or reckless disregard of its obligations hereunder. Notwithstanding anything to the contrary contained herein, the Trustee shall be entitled to all of the privileges, rights and benefits granted to the Trustee in the Indenture in performing its duties hereunder.

(b) In connection with the indemnification set forth in subsection (a) hereof, upon reasonable prior notice, the indemnified party will afford to the Pledgor the right, in its sole discretion and at its sole expense, to assume the defense of any claim, including, but not limited to, the right to designate counsel and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of such claim; provided, that if the Pledgor assumes the defense of such claim, it shall not be liable for any separate fees and expenses of counsel of any indemnified party incurred thereafter in connection with such claim except that if such indemnified party reasonably determines that counsel designated by the Pledgor has a conflict of interest, Pledgor shall pay the reasonable fees and disbursements of one counsel separate from its own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances; and provided, further, that prior to entering into any final settlement or compromise, Pledgor shall seek the consent of the indemnified party and use its commercially reasonable efforts in the light of the then prevailing circumstances (including, without limitation, any express or implied time constraint on any pending settlement offer) to obtain the consent of such indemnified party as to the terms of settlement or compromise. If an indemnified party does not consent to the settlement or compromise within a reasonable time under the circumstances, the Pledgor shall not thereafter be obligated to indemnify the indemnified party for any amount in excess of such proposed settlement or compromise.

14. Trustee Actions Though Agents. Notwithstanding anything herein to the contrary, the Trustee may exercise any of its rights or powers or perform any of its duties hereunder either directly or by or through agents (including, without limitation, brokers and investment bankers) or attorneys and shall not be responsible for the willful misfeasance, or gross negligence of such parties.

15. Financing Statements; Other Documents. On and after the date hereof, Pledgor hereby authorizes Trustee and/or Taberna Capital Management, LLC to file UCC-1 financing statements with respect to the Collateral. Notwithstanding such authorization, the Trustee shall have no duty to file or maintain any such filing. Pledgor agrees to deliver any other document or instrument which Trustee and/or Taberna Capital Management, LLC may reasonably request with respect to the Collateral for the purposes of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted.

16. Receipt of Sale Proceeds. Upon any sale of the Collateral, or any portion thereof, by Trustee hereunder (whether by virtue of the power of sale herein granted, pursuant to judicial process or otherwise), the receipt of Trustee or the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to Trustee or such officer or be answerable in any way for the misapplication or non-application thereof.

17. Attorney-in-Fact. Without limiting any rights or powers granted by this Agreement to Trustee, Trustee is hereby appointed the attorney-in-fact of Pledgor, which appointment as attorney-in-fact is irrevocable and coupled with an interest, for the purpose of, upon the occurrence and during the continuance of an Event of Default, carrying out the provisions of this Agreement and taking any action and executing any instruments which Trustee, at the direction of the Majority Holders in their sole discretion, may deem necessary or advisable to accomplish the purposes hereof, including, without limitation:

(a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(b) to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (a) above;

(c) to file any claims or take any action or institute any proceedings that Trustee or Taberna Capital Management, LLC may deem necessary or desirable for the perfection and/or collection of any of the Collateral or otherwise to enforce the rights of Trustee with respect to any of the Collateral; and

(d) to execute, in connection with any sale provided for in Section 10 or Section 11 hereof, any endorsement, assignments, or other instruments of conveyance or transfer with respect to the Collateral.

If so requested by Trustee, at the direction of the Majority Holders, Pledgor shall ratify and confirm any such sale or transfer by executing and delivering to Trustee at Pledgor's expense all proper deeds, bills of sale, instruments of assignment, conveyance or transfer and releases as may be designated in any such request.

18. Additional Covenants of Pledgor Relating to Affirmative and Negative Covenants with respect to Pledged Entity. Pledgor covenants and agrees that, from and after the date of this Agreement until the Obligations are satisfied in full or this Agreement is released as provided in the Indenture, Pledgor shall take, and/or shall cause Pledged Entity to take, any and all actions either necessary or reasonably requested by Trustee to ensure compliance with the terms of the Indenture applicable to Pledged Entity and not to take any actions that violate the Indenture or any Indenture Documents.

19. Intentionally Omitted.

20. Incorporation of Indenture Provisions. Pledgor agrees that the terms and provisions of Article VI of the Indenture concerning the Trustee are hereby incorporated by reference into this Agreement to the same extent and with the same force as if fully set forth herein.

21. Intentionally Omitted.

22. Enforcement Expenses. Pledgor agrees to pay to Trustee, the Holders and Taberna Capital Management, LLC all out-of-pocket expenses (including reasonable expenses for legal services of every kind) of, or incident to, the enforcement of any of the provisions of this Agreement, or performance by Trustee of any obligations of Pledgor and/or Pledged Entity in respect of the Collateral which Pledgor or Pledged Entity have failed or refused to perform, or any actual or attempted sale, or any exchange, enforcement, collection, compromise or settlement in respect of any of the Collateral, and for the care of the Collateral and defending or asserting rights and claims of Trustee in respect thereof, by litigation or otherwise and all such expenses shall be secured under Section 2 hereof.

23. Intentionally Omitted.

24. Miscellaneous.

(a) Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(b) Headings. The headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

(c) No Waiver; Cumulative Remedies. Trustee shall not by any act (except by a written instrument pursuant to Section 24(d) hereof), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of Trustee, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by Trustee of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that Trustee would otherwise have on any future occasion. The rights, remedies, powers and privileges herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights, remedies, powers or privileges provided by law.

(d) Waivers and Amendments; Successors and Assigns. None of the terms or provisions of this Agreement may be waived, amended, or otherwise modified except by a written instrument executed by the party against which enforcement of such waiver, amendment, or modification is sought. This Agreement shall be binding upon and shall inure to the benefit of Pledgor and the respective successors and assigns of Pledgor and shall inure to the benefit of Trustee and its successors and assigns; provided that Pledgor shall not have any right to assign its rights hereunder, except as set forth in the Indenture.

(e) Notices. Notices by Trustee to Pledgor or Pledged Entity to be effective shall be in writing, addressed or transmitted to Pledgor, or Pledged Entity at the address of Pledgor set forth herein, and shall be deemed to have been duly given if made in accordance with the terms and provisions of the Indenture.

(f) Trustee Direction. The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, demand, consent, authorization, waiver, order, act, note or other communication, paper or document (each such item, a "*Trustee Direction*") believed by it to be genuine and to have been signed, presented or delivered (whether by telecopy, electronic mail, first-class mail, courier service, or otherwise, notwithstanding any contradictory requirement hereunder) by a party or parties authorized to provide such Trustee direction; provided, however, that the Trustee may require such additional evidence, confirmation or certification from any such party or parties as the Trustee, in its reasonable discretion, deems necessary or advisable before acting or refraining from acting upon any such Trustee Direction.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the Pledgor shall, upon request, provide to the Trustee an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Trustee receives e-mail or facsimile instructions (or instructions by a similar electronic method) in accordance with and to the extent permitted under the terms of this Agreement and the Indenture and the Trustee acts upon such instructions in accordance with the terms of this Agreement and the Indenture, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Pledgor agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(g) Governing Law.

(i) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK AND MADE BY PLEDGOR AND ACCEPTED BY TRUSTEE IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, PLEDGOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, IT BEING ACKNOWLEDGED AND AGREED THAT THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTIONS 5-1401 and 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(ii) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST PLEDGOR ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT TRUSTEE'S OPTION, UPON THE DIRECTION OF THE MAJORITY HOLDERS, BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY AND STATE OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND PLEDGOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON-CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND PLEDGOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

PLEDGOR AGREES THAT ANY AND ALL PROCESS MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AT THE ADDRESS SET FORTH ABOVE AND AGREES THAT SERVICE OF PROCESS AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO PLEDGOR IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON PLEDGOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. PLEDGOR SHALL GIVE PROMPT NOTICE TO TRUSTEE OF ANY CHANGED ADDRESS HEREUNDER. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF TRUSTEE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST PLEDGOR IN ANY OTHER JURISDICTION.

(h) Irrevocable Authorization and Instruction to Pledged Entity. Pledgor hereby authorizes and instructs Pledged Entity to comply with any instruction received by it from Trustee, upon instruction from the Majority Holders, in writing that (i) states that an Event of Default has occurred and is continuing, and (ii) is otherwise in accordance with the terms of this Agreement.

(i) Counterparts. This Agreement may be executed in any number of counterparts and all the counterparts taken together shall be deemed to constitute one and the same instrument.

(j) Waiver of Jury Trial. **PLEDGOR HEREBY AGREES TO WAIVE ITS RIGHTS TO A JURY TRIAL ON ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, OR ANY DEALINGS BETWEEN PLEDGOR AND TRUSTEE, THE HOLDERS AND/OR TABERNA CAPITAL MANAGEMENT, LLC. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. PLEDGOR REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH WAIVER IS KNOWINGLY AND VOLUNTARILY GIVEN FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED, EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, REPLACEMENTS, REAFFIRMATIONS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, OR ANY OTHER INDENTURE DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

(k) Special Damages. No claim may be made by Pledgor against Trustee, the Holders, Taberna Capital Management, LLC or any of their respective successors, assigns, affiliates and/or their respective directors, officers, members, partners, employees or attorneys for any special, indirect, punitive or consequential damages ("*Special Damages"*) in respect of any breach or wrongful conduct (whether the claim therefor is based on contract, tort or duty imposed by law) in connection with, arising out of, or in any way relating to the transactions contemplated or relationship established by this Agreement, or any act, omission or event occurring in connection herewith or therewith; and to the fullest extent permitted by law, Pledgor hereby waives, releases and agrees not to sue upon any such claim for Special Damages, whether or not accrued and whether or not known or suspected to exist in its favor.

25. Termination. Subject to any provisions contained herein that are expressly stated to survive termination of this Agreement, this Agreement shall terminate and be of no further effect immediately upon the release of the Collateral by the Trustee pursuant to Section 10.5(c) of the Indenture.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties have caused this Pledge and Security Agreement to be executed by their duly authorized officers as of the date set forth above.

PLEDGOR:

NEWCASTLE INVESTMENT CORP., a Maryland corporation

By: /s/ Brian Sigman
Name: Brian Sigman
Title: Chief Financial Officer

Signature Page to Pledge and Security Agreement

THE BANK OF NEW YORK MELLON TRUST
COMPANY, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Bill Marshall
Name: Bill Marshall
Title: Vice President

Signature Page to Pledge and Security Agreement

SCHEDULE I
To Pledge Agreement

DESCRIPTION OF
PLEDGED OWNERSHIP INTERESTS

Pledged Entity	Owner	Percentage of Ownership Interests
NIC TP LLC, a Delaware limited liability company	Newcastle Investment Corp.	100%

<u>SCHEDULE II</u>

To Pledge Agreement

DESCRIPTION OF PENDING LITIGATIONS

Donald J. Trump, 401 Mezz Venture LLC, 401 North Wabash Venture LLC and Trump International Hotels Management LLC, plaintiffs, vs. Deutsche Bank Trust Company Americas, Deutsche Bank Securities Inc., Fortress Credit Corp., Union Labor Life, Istar, Merrill Lynch Capital Corp., Norddeutsche Landesbank, Hahn, Landesbank Sachsen Aktiengesel, Highland Funds, Morgan Stanley Mortgage Capital, Oak Hill Funds, Deutsche Hypothekenbank, AIB Debt Management, Bank of East Asia Ltd, Foothill, Satellite Senior Inc. 11, Eaton Vance/Grayson & Co., MJX Venture, E. Sun Commercial Bank, Greenwich Capital Financial, Bank of Communications, German American Capital Corporation, Blackacre Institutional Capital Management, LLC, Newcastle Investment Corp., PCRL Investments L.P., Dune Capital LP and Drawbridge Special Opportunities Fund L.P., defendants, in the Supreme Court of the State of New York, County of Queens (Index No.: 26841/08)

EXHIBIT B

EXHIBIT C

Exhibit C

EXHIBIT D

Exhibit D

EXHIBIT E

Exhibit E

Exhibit 4.3

PLEDGE, SECURITY AGREEMENT AND ACCOUNT CONTROL AGREEMENT

THIS PLEDGE, SECURITY AGREEMENT AND ACCOUNT CONTROL AGREEMENT (this "*Agreement*") is entered into as of April 30, 2009, by NEWCASTLE INVESTMENT CORP., a Maryland corporation (the "*Company*"), NIC TP LLC, a Delaware limited liability company (the "*Pledgor*"), THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association (the "*Bank*") and THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, in its capacity as trustee for the benefit of the Holders (as defined below) from time to time under the Indenture referred to below (together with its successors and assigns, the "*Trustee*").

RECITALS

WHEREAS, the Company and the Trustee are parties to that certain Junior Subordinated Indenture dated as of April 30, 2009 with respect to the Company's Junior Subordinated Notes due 2035 (the "*Securities*") (as the same may be amended, restated, supplemented or replaced from time to time, the "*Indenture*"). Capitalized terms used herein and not defined shall have the meanings ascribed to them in the Indenture.

WHEREAS, pursuant to Section 10.5 of the Indenture, the Company has agreed to enter into this Agreement in order to pledge to the Trustee the Collateral (as defined below) and to grant in favor of the Trustee a security interest in the Collateral, and to perfect the Trustee's security interest in the Collateral Account (as defined below).

WHEREAS, the Pledgor is a special purpose, wholly owned subsidiary of the Company.

WHEREAS, the Pledgor maintains that certain account no. 76148, entitled "NEWCASTLE NIC TP CUSTODY" with the Bank (the "*Collateral Account*") pursuant to a custodial agreement between the Bank and the Pledgor dated as of April 30, 2009 (the "*Account Agreement*"), a copy of which is attached hereto as Exhibit A, into which certain funds shall be deposited as provided herein and the Indenture.

WHEREAS, the Trustee, the Pledgor, the Company and the Bank have agreed to enter into this Agreement so as to pledge to and grant unto the Trustee, for the benefit of the Holders (defined below), the Collateral and perfect the Trustee's security interest in the Collateral Account, and the Company has, additionally, entered into this Agreement for the purpose of confirming certain obligations of the Company to the Bank and the Trustee in connection with the Pledgor's pledge and other agreements contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of their mutual covenants and promises, the parties hereto agree as follows:

1. **Definitions**. As used in this Agreement, the following terms have the meaning specified below:

"*Business Day*" shall mean any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions in the City of New York are authorized or required by law or executive order to remain closed or (iii) a day on which the Corporate Trust Office of the Trustee is closed for business.

"*Collateral*" shall mean, collectively, (i) the Collateral Account; together with all funds credited and on deposit in the Collateral Account; and (ii) any and all proceeds of any of the foregoing whether now owned and existing or hereafter acquired or arising including, without limitation, proceeds received upon the sale, exchange or other disposition of any of the foregoing.

"*Event of Default*" shall mean an event of default under the Indenture.

"*Holders*" shall mean the holders of the outstanding Securities.

"*Interest*" shall have the meaning given to such term in Section 2(d).

"*Majority Holders*" shall mean Holders of a majority in aggregate principal amount of the outstanding Securities.

"*Participation Interest*" shall mean that certain A-4 Participation Interest in the amount of $23,125,000 in that certain Mezzanine Loan (the "*Mezzanine Loan*") in the maximum principal amount of $130,000,000 made by Fortress Credit Corp. as of February 7, 2005 to 401 Mezz Venture LLC, a Delaware limited liability company, the owner of one hundred percent (100%) of the ownership interest in 401 North Wabash Venture LLC, a Delaware limited liability company, the owner of certain property known as the Trump International Hotel and Tower Chicago (the "*Trump Property*").

"*Person*" shall mean a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, government or any agency or political subdivision thereof, or any other entity of whatever nature.

"*Participation Proceeds*" shall mean all of the Pledgor's right, title and interest in, to and under all payments, repayments, prepayments (including, but not limited to, exit fees, termination fees, equity kickers, defeasance collateral and the like), proceeds, distributions, cash, instruments and other property (other than the Participation Interest itself), collateral and other amounts from time-to-time received, or receivable in respect of the Mezzanine Loan, the Participation Interest, the Trump Property, or under the Participation Agreement.

"*Securities*" shall mean the "Securities," as defined in the Indenture.

"*Trump Property*" shall have the meaning set forth in the definition of Participation Interest.

In addition, the term "*proceeds*" shall have the meaning set forth in the Uniform Commercial Code as in effect in the State of New York (the "*UCC*"). In the event that the UCC is revised subsequent to the date hereof, all references herein to the UCC shall be deemed to be references to such revision and the corresponding successor provisions and requirements.

2. **Characterization of Collateral Account; Deposits to Collateral Account; Creation of Securities Account**.

(a) The Collateral Account is and shall be treated as a "deposit account" as such term is defined in Section 9-102(a)(29) of the UCC. Cash shall be deposited and maintained in the Collateral Account.

(b) Pledgor shall deposit all Participation Proceeds and all cash and instruments received or distributed in respect of the Participation Interest and any other cash Collateral into the Collateral Account within two (2) Business Days after receipt of such amounts.

(c) Pledgor agrees that upon its receipt of any item of property other than cash (whether investment property, financial assets, securities, instruments, or other property) in respect of the Participation Interest, it shall promptly create a securities account, transfer such property to such securities account, and grant a first priority security interest in such securities account to the Trustee on behalf of the Holders, on substantially the same terms as agreed to herein with respect to the Collateral and the Collateral Account.

(d) Notwithstanding anything to the contrary in this Agreement or the Pledge and Security Agreement, dated the date hereof by and between Newcastle Investment Corp., a Maryland corporation, and the Trustee, so long as no Event of Default has occurred, Pledgor shall be entitled to receive any and all interest accruing and on deposit in the Collateral Account with respect amounts in the Collateral Account, if any, including any interest paid or accrued upon such Interest ("Interest"), and such interest shall not be deemed to be Collateral or subject to any lien or other restriction granted pursuant to this Agreement. So long as no Event of Default has occurred, Bank shall distribute such Interest amount to the Pledgor quarterly on each of January 30, April 30, July 30 and October 30 of each year. Trustee agrees that all funds distributed from the Collateral Account are automatically released from any security interest of the Trustee in such funds.

(e) Pledgor represents and warrants as of the date hereof and covenants that Pledgor owns the Participation Interest and has right and title to the Participation Proceeds, free and clear of all pledges, liens, hypothecations, security interests, charges, options or other encumbrances whatsoever, except the lien and security interest created by this Agreement and any related financing statements.

3. **Pledge; Grant of Security Interest and Agreement for Control**

(a) The Pledgor hereby pledges and grants to the Trustee, as collateral security for the amounts now or hereafter to become due with respect to the Securities, a first priority security interest in all of the Pledgor's right, title and interest in and to the Collateral, whether now owned by the Pledgor or hereafter acquired and whether now existing or hereafter coming into existence, and the Bank hereby acknowledges the security interest granted to the Trustee herein.

(b) The Pledgor, the Company and the Bank acknowledge and agree that all Collateral on deposit in the account is subject to the sole dominion, control and discretion of the Trustee, its authorized agents or designees, subject to the terms of this Agreement.

(c) The Bank acknowledges that the Trustee shall have, in addition to the rights and remedies set forth herein and in the Indenture, all of the rights and remedies available to a secured party under the UCC, as if such rights and remedies were fully set forth herein.

(d) At all times, the Bank is authorized by the Pledgor, and the Bank agrees, to comply with (i) all instructions originated by the Trustee directing disposition of funds in the Account without the consent of the Pledgor or any other Person and (ii) all other directions, requests or instructions from the Trustee regarding disposition and/or delivery of any of the Collateral, without the consent or direction from the Pledgor or any other Person (including, without limitation, the Company). The Trustee hereby agrees with the Pledgor and the Company that it shall not deliver instructions directing disposition of the funds in the Collateral Account except during such time that an Event of Default shall have occurred and be continuing under the Indenture. The foregoing sentence is solely an agreement among the Trustee, the Pledgor and the Company; therefore, such provision (i) in no way limits or modifies the Bank's obligations under this Section 3 and (ii) imposes no duty or obligation on the Bank to investigate or inquire of any party whether and Event of Default or other condition exists under the Indenture or any other agreement between the Pledgor and/or the Company and the Trustee.

(e) The Bank hereby acknowledges that, except, as otherwise provided herein with respect to Interest to be disbursed to the Company, until such time as the Bank receives written instructions from the Trustee to the contrary, the Bank shall: (i) make any payments and distributions from the Collateral Account to such account as shall be directed by the Trustee, (ii) comply with the instructions of the Trustee without any further consent from the Pledgor or any other Person (including, without limitation, the Company) in respect of the Collateral and (iii) except as set forth in this Section 3(e), not take any other action with respect to the Collateral, effectuating any settlements with respect to any Collateral (provided that the foregoing shall not prohibit deposits of Collateral into the Collateral Account where settlement has been effectuated from funds other than the Collateral), advancing funds to any Person, transferring or releasing any Collateral, releasing interest, dividends or distributions, or retaining or setting off amounts due to the Bank against the Collateral (except as explicitly provided in Section 5(d) hereof).

(f) The Pledgor shall have the right to give instructions directing the disposition of funds in the Collateral Account so long as no Event of Default has occurred and it continuing and such instructions are only with respect to an amount not in excess of the total amount of Interest credited to the Collateral Account and not previously withdrawn.

4. **Rights With Respect to the Collateral**. Other than the Trustee, neither the Pledgor nor any other Person (including, without limitation, the Company) shall have any authority whatsoever to sell, transfer, pledge, trade, deposit, withdraw, direct the disposition of or otherwise handle the Collateral Account (subject to Section 3(f)) or, except as otherwise expressly permitted under the Indenture, any other Collateral. Neither the Pledgor nor any Person (including, without limitation, the Company), other than the Trustee, may withdraw any amounts from the Collateral Account (subject to Section 3(f)). The Bank will not comply with any entitlement order or request to withdraw any amounts from the Collateral Account given by any Person other than the Trustee (subject to Section 3(f)).

5. **Bank's Representations and Warranties**. The Bank represents and warrants to the Trustee that:

(a) The Collateral Account is maintained with the Bank solely in the Pledgor's name.

(b) The Bank has no knowledge of any claim to, security interest in or lien upon any of the Collateral, except for the security interests granted in favor of the Trustee as provided in this Agreement and security interests of Bank pursuant to the Account Agreement.

(c) Any claim to, security interest in or lien upon or right of set-off against any of the Collateral which the Bank now has or at any time hereafter acquires shall be junior and subordinate to the security interests of the Trustee in the Collateral, except that the Bank will retain its prior lien on the funds in the Collateral Account to the extent necessary to secure payment of ordinary fees with respect to the administration and maintenance of the Collateral Account (which ordinary fees shall in no event include acceptance fees, legal or counsel fees and charges, or fees for extraordinary services or other services not covered by the annual fees for administration and maintenance of the Collateral Account).

6. **Agreements of Bank and Pledgor**. The Bank and the Pledgor agree and the Company acknowledges and agrees that:

(a) The Bank shall flag its books, records and systems to reflect the Trustee's security interests in the Collateral and shall provide notice thereof to any Person making inquiry as to the Pledgor's accounts or, if applicable, the Company's accounts with the Bank to whom or which the Bank is legally required or permitted to provide information.

(b) The Bank shall send copies of monthly statements and advices, and all other statements and notices relating to the Collateral Account simultaneously to the Pledgor and the Trustee.

(c) The Bank shall promptly notify the Trustee if, to the actual knowledge of the Bank, any other Person (including, without limitation, the Company) asserts any claim to, security interest in or lien upon or right of set-off against any of the Collateral, and the Bank has not and shall not enter into any control, custodial or other similar agreement with any such Person (including, without limitation, the Company) that would create or acknowledge the existence of any other claim, security interest or lien upon or right of set-off against any of the Collateral.

(d) Without the Trustee's prior written consent, the Bank and the Pledgor shall not amend, or modify the Account Agreement, other than amendments to reflect ordinary and reasonable changes in the Bank's fees and charges for handling the Collateral Account.

(e) Neither the Bank nor the Pledgor shall terminate the Account Agreement without giving thirty (30) calendar days' prior written notice to the Trustee and the Majority Holders.

7. **Indemnity**. The Pledgor and the Company shall jointly indemnify, defend and save harmless the Bank and the Trustee from all claims, actions, suits, losses, damages, costs, actual out-of-pocket expenses or liability of any nature and type (including the reasonable fees and expenses of in-house or outside counsel) incurred by the Bank and the Trustee in any action or proceeding between the Pledgor or the Trustee and the Bank arising out of or in connection with (i) its execution or the performance of the terms of this Agreement, except to the extent that any of the foregoing are due to the gross negligence or willful misconduct of the Bank or the Trustee, as applicable, or either of their directors, officers, or employees, or (ii) its following any instructions or other directions from the Trustee. Amounts payable under this Section 7 shall be paid within three (3) Business Days of Bank's demand in writing. The parties hereto acknowledge that the foregoing indemnities shall survive the termination of this Agreement.

8. **Trustee Appointed Attorney-in-Fact**. The Pledgor hereby irrevocably constitutes and appoints the Trustee as the Pledgor's true and lawful attorney-in-fact, with full power of substitution upon the occurrence of an Event of Default, to execute, acknowledge and deliver any instruments, and to exercise and enforce every right, power, remedy, option and privilege of the Pledgor with respect to the Collateral, and do in the name, place and stead of the Pledgor, all such acts, things and deeds for and on behalf of and in the name of the Pledgor, which the Pledgor could or might do or which the Trustee may deem necessary or desirable to more fully vest in the Trustee the rights and remedies provided for herein and to accomplish the purposes of this Agreement and the Indenture. The foregoing powers of attorney are irrevocable and are coupled with an interest. If the Pledgor fails to perform any agreement herein contained and such failure shall continue for five (5) Business Days after written notice of such failure is given to the Pledgor, the Trustee may perform or cause performance of any such agreement, and any reasonable fees and expenses of the Trustee in connection therewith shall be paid by the Pledgor.

9. **Governing Law**. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH (WITHOUT REGARD TO ITS CONFLICT OF LAWS PRINCIPLE OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW), THE LAWS OF THE STATE OF NEW YORK. THE PLEDGOR, THE COMPANY, THE TRUSTEE AND THE BANK AGREE THAT ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING IN THE COUNTY, CITY AND STATE OF NEW YORK OR IN THE CITY OF NEW YORK AND CONSENT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON SUCH PERSON IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS AGREEMENT. EACH OF THE PLEDGOR, THE COMPANY, THE TRUSTEE AND THE BANK HEREBY WAIVE ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT. REGARDLESS OF ANY PROVISION IN ANY OTHER AGREEMENT, FOR PURPOSES OF THE UCC, THE STATE OF NEW YORK SHALL BE THE BANK'S JURISDICTION (WITHIN THE MEANING OF SECTION 9-304 OF THE UCC).

10. **Jury Trial**. EACH OF THE PLEDGOR, THE COMPANY, THE TRUSTEE AND THE BANK, FOR ITSELF AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF, WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH OF THE PLEDGOR, THE COMPANY, THE TRUSTEE AND THE BANK HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY.

11. **Miscellaneous**.

    (a) This Agreement shall not create any obligation or duty of the Bank except as expressly set forth herein.

    (b) As to the matters the subject of this Agreement, in the event of any conflict between the terms of this Agreement and the Account Agreement or any other agreement between the Bank and the Pledgor, the Bank and/or the Company, the terms of this Agreement shall control.

(c) All notices, requests, instructions and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing (unless otherwise specifically provided) and delivered to each party at the address or facsimile number set forth below, or to such other address or facsimile number as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by facsimile, upon receipt; and (iii) if sent by mail, return receipt requested, upon the date of receipt, to:

Trustee:	THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION 601 Travis Street, 16th Floor Houston, Texas 77002 Attention: Global Corporate Trust — Newcastle Investment Corp. Tel: (713) 483-6029 Fax: (713) 483-6627
Pledgor:	NIC TP LLC c/o Newcastle Investment Corp. 1345 Avenue of the Americas New York, New York 10105 Attn: Jason Corn Tel: (310) 228-5444 Fax: (917) 591-8634
Company:	NEWCASTLE INVESTMENT CORP. 1345 Avenue of the Americas New York, New York 10105 Attn: Jason Corn Tel: (310) 228-5444 Fax: (917) 591-8634
Bank:	THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION 601 Travis Street, 16th Floor Houston, Texas 77002 Attention: Global Corporate Trust — Newcastle Investment Corp. Tel: (713) 483-6029 Fax: (713) 483-6627
Majority Holders:	Taberna Capital Management, LLC 450 Park Avenue — 11th Floor New York, New York 10022 Attn: Michael Fralin Tel: (917) 322 — 6902 Fax: (212) 735-1449

(d) This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties; provided however, that the Bank may not assign its obligations hereunder without the prior written consent of the Trustee and the Majority Holders. This Agreement may be amended or modified only in writing signed by all parties hereto.

(e) This Agreement shall terminate upon the earliest to occur of (i) the payment in full of all amounts due on account of the Securities, and the Bank's receipt of written notice from the Trustee; (ii) any other termination of the Account Agreement agreed to in writing in advance by the Trustee; (iii) the Bank's delivery of all Collateral to the Trustee or its designee in accordance with the written instructions of the Trustee; and (iv) the Bank's delivery of all Collateral to the Pledgor or its designee in accordance with the written instructions of the Trustee.

(f) This Agreement may be executed in counterparts, each of which shall be an original and all of which when taken together shall constitute one binding Agreement.

12. **No Third-Party Beneficiaries**. This Agreement is being made solely for the benefit of the Trustee, on behalf of the Holders, and no other Person shall, under any circumstances, be deemed to be a third-party beneficiary under this Agreement (except as set forth in Section 7). Nothing contained in this Agreement shall be deemed to confer upon any Person other than the Trustee, the Pledgor, the Company and the Bank any rights under, or any right to insist upon or to enforce the performance or observance of any of the terms or provisions of, this Agreement.

13. **Trustee's Rights**. All of the Trustee's rights set forth herein are and shall be for the sole benefit of the Holders in accordance with the terms of the Indenture and shall be exercised in accordance with the terms of the Indenture.

14. **Event of Default**. During the existence of an Event of Default under the Indenture, or in the event of any default in the terms, provisions and agreements of Pledgor or the Company hereunder (each of the foregoing, an *"Event of Default"*), the Trustee shall and is hereby authorized to exercise all remedies under the Indenture, this Agreement and at law, including, without limitation, to direct one or more sales of all or any portion of the Collateral and/or to direct a release to the Trustee or the Holders of all or any portion of the Collateral and all proceeds thereof.

15. **Limitation on Liability — Bank**. The Bank shall not have any duties, obligations or liabilities except those expressly set forth herein. Without limiting the generality of the foregoing, the Bank shall not be subject to any fiduciary or other implied duties outside of the exercise of due care and good faith, and the Bank shall not have any duty to take any discretionary action or exercise any discretionary powers. The Bank shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing delivered to the Bank under or in connection with this Agreement (whether delivered by telecopy, electronic mail, courier service or otherwise) and believed by it to be genuine and to have been signed or sent by the proper person. None of the Bank, or any officer, agent, stockholder, partner, member, director or employee of the Bank shall have any liability, whether direct or indirect and whether in contract, tort or otherwise (i) for any action taken or omitted to be taken by any of them hereunder or in connection herewith unless such act or omission was performed or omitted in bad faith, or constituted willful misfeasance, gross negligence or reckless disregard of the Bank's duties hereunder, or (ii) for any action taken or omitted to be taken by the Bank at the express direction of the Trustee. With the exception of this Agreement, the Bank is not responsible for or chargeable with knowledge of any terms or conditions contained in any agreement referred to herein, and expressly disclaims any responsibility for determining the existence, validity, enforceability or perfection of any security interest granted to the Trustee or the adequacy or sufficiency of the Collateral. Anything in this Agreement notwithstanding, in no event shall the Bank be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Bank has been advised of such loss or damage and regardless of the form of action.

16. **Rights, Privileges and Immunities Incorporated**. The rights, privileges, protections and immunities of the Bank contained in the Account Agreement shall be incorporated into the Agreement by reference as fully as if they were expressly contained herein.

17. **Limitation on Liability — Trustee**.

    (a) Subject to the terms of the Indenture, the Trustee will have no responsibility under this Agreement other than to render the services called for hereunder in good faith and without willful malfeasance, negligence or reckless disregard of its duties hereunder. The Trustee may act or rely upon, and shall incur no liability to anyone for acting or relying upon, any signature, instrument, statement, notice, resolution, request, direction, consent, order, certificate, report, opinion, bond or other document or paper (whether delivered by telecopy, electronic mail, courier service or otherwise) reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. Neither the Trustee nor any of its affiliates, directors, officers, shareholders, agents or employees will be liable to the Bank, the Pledgor, the Company or any Person affiliated with any of the foregoing, except by reason of acts or omissions constituting bad faith, willful misfeasance, gross negligence or reckless disregard of the Trustee's duties hereunder. The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Majority Holders relating to the time, method or place of conducting any action or proceeding available to or required of the Trustee hereunder. Anything in this Agreement notwithstanding, in no event shall the Trustee be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of such loss or damage and regardless of the form of action. The rights, privileges, protections and immunities of the Trustee contained in the Indenture shall be incorporated into this Agreement by reference as fully as if they were expressly contained herein.

(b) Each of the Trustee and the Securities Bank may accept and act upon instructions or directions pursuant to this Agreement sent by unsecured email, facsimile transmission or other similar unsecured electronic methods; provided, however, that any Person giving such instructions or directions shall deliver to the Trustee and the Securities Bank an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from such certificate. If such Person elects to give the Trustee or the Securities Bank email or facsimile instructions (or instructions by a similar electronic method) and the Trustee or the Securities Bank in its discretion elects to act upon such instructions, the Trustee's (or, as applicable, the Securities Bank's) understanding of such instructions shall be deemed controlling. The Trustee and the Securities Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. Each Person providing instructions or directions to the Trustee or the Securities Bank hereunder agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee or the Securities Bank, including without limitation the risk of the Trustee or the Securities Bank acting, in good faith, on unauthorized instructions, and the risk of interception and misuse by third parties.

(c) Each of the Trustee and the Securities Bank may, but is not required to, rely upon and comply with instructions and directions sent by email or facsimile (or any other reasonable means of communication) by persons believed by the Trustee or the Securities Bank in good faith to be authorized to provide such instructions or direction; provided, however, that the Trustee and the Securities Bank may require such additional evidence, confirmation or certification from any such party or parties as the Trustee or the Securities Bank, in its reasonable discretion, deems necessary or advisable before acting or refraining from acting upon any such instruction or direction.

18. **Termination**. Subject to Section 7, this Agreement shall terminate and be of no further effect immediately upon the release of the Collateral by the Trustee pursuant to Section 10.5(c) of the Indenture.

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

BANK:

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION,
a national banking association

By /s/ Bill Marshall
Name: Bill Marshall
Title: Vice President

SIGNATURE PAGE TO PLEDGE, SECURITY AGREEMENT AND ACCOUNT CONTROL AGREEMENT

PLEDGOR:

NIC TP LLC, a Delaware limited liability company

By /s/ Brian Sigman

Name: Brian Sigman

Title: Chief Financial Officer

SIGNATURE PAGE TO PLEDGE, SECURITY AGREEMENT AND ACCOUNT CONTROL AGREEMENT

COMPANY:

NEWCASTLE INVESTMENT CORP. a Maryland corporation

By /s/ Brian Sigman
Name: Brian Sigman
Title: Chief Financial Officer

SIGNATURE PAGE TO PLEDGE, SECURITY AGREEMENT AND ACCOUNT CONTROL AGREEMENT

TRUSTEE:

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association as trustee for the benefit of the Holders from time to time under the Indenture

By /s/ Bill Marshall
Name: Bill Marshall
Title: Vice President Address: 601 Travis Street, 16th Floor Houston, Texas 77002

Address: 601 Travis Street, 16th Floor Houston, Texas 77002

SIGNATURE PAGE TO PLEDGE, SECURITY AGREEMENT AND ACCOUNT CONTROL AGREEMENT

Exhibit A

Account Agreement

Exhibit 10.1

EXCHANGE AGREEMENT

among

NEWCASTLE INVESTMENT CORP.

and

TABERNA PREFERRED FUNDING IV, LTD.,

TABERNA PREFERRED FUNDING V, LTD.,

TABERNA PREFERRED FUNDING VI, LTD.,

and

TABERNA PREFERRED FUNDING VII, LTD.

Dated as of April 30, 2009

EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT, dated as of April 30, 2009 (this "**Agreement**"), is entered into by and among NEWCASTLE INVESTMENT CORP., a Maryland corporation (the "**Company**") and TABERNA PREFERRED FUNDING IV, LTD. ("**Taberna IV"**), TABERNA PREFERRED FUNDING V, LTD. (" **Taberna V"**), TABERNA PREFERRED FUNDING VI, LTD. ("**Taberna VI"**), and TABERNA PREFERRED FUNDING VII, LTD.("**Taberna VII**", and together with Taberna IV, Taberna V and Taberna VI, collectively, " **Taberna**" and each a "**Taberna Entity**"), each an exempted company incorporated and existing under applicable law of the Cayman Islands.

RECITAL:

A. Reference is made to that certain Junior Subordinated Indenture dated as of March 29, 2006 (the "**Existing Indenture**"), by and between the Company and The Bank of New York Mellon Trust Company, National Association (" **BNYM**") (as successor to JPMorgan Chase Bank, National Association), as trustee (the "**Existing Indenture Trustee**").

B. Reference is made to that certain Amended and Restated Trust Agreement dated as of March 29, 2006 (the "**Trust Agreement**") by and among the Company, as depositor, BNYM (successor to JPMorgan Chase Bank, National Association, as property trustee)(the "**Property Trustee**"), BNY Mellon Trust of Delaware (as successor to Chase Bank USA, National Association), as Delaware trustee (the "**Delaware Trustee**"), and the respective administrative trustees named therein.

C. Newcastle Trust I ("**Trust I**") is the holder of the Junior Subordinated Note due 2036 in the original aggregate principal amount of $100,100,000 issued by the Company pursuant to the Existing Indenture (the "**Subordinated Note**").

D. Taberna IV, Taberna V, Taberna VI and Taberna VII are the holders of Preferred Securities in the original aggregate Liquidation Amount of $100,000,000 issued by Trust I pursuant to the Trust Agreement, copies of the definitive notes being attached hereto as Exhibit A (the "**Original Preferred Securities**").

E. Simultaneously herewith, the Company and BNYM, as trustee (the "**New Indenture Trustee**") have entered into that certain Junior Subordinated Indenture (the "**New Indenture**") pursuant to which Company proposes to issue One Hundred One Million Seven Hundred Thousand Dollars ($101,700,000) in aggregate principal amount (as the same may be increased from time to time in accordance with the terms of the New Indenture) of the Junior Subordinated Notes due 2035 of the Company, with such aggregate principal amount allocated to each Taberna Entity and the definitive notes being issued as follows (collectively, the "**Securities**"):

(i) Junior Subordinated Note due 2035 in the original stated principal amount of $24,789,000 (as the same may be increased from time to time in accordance with the terms of the New Indenture) issued by the Company to Taberna IV, a copy of which is attached hereto as Exhibit B-1 ("**Note 1**");

(ii) Junior Subordinated Note due 2035 in the original stated principal amount of $26,061,000 (as the same may be increased from time to time in accordance with the terms of the New Indenture) issued by the Company to Taberna V, a copy of which is attached hereto as Exhibit B-2 (“**Note 2**”);

(iii) Junior Subordinated Note due 2035 in the original stated principal amount of $25,425,000 (as the same may be increased from time to time in accordance with the terms of the New Indenture) issued by the Company to Taberna VI, a copy of which is attached hereto as Exhibit B-3 (“**Note 3**”); and

(iv) Junior Subordinated Note due 2035 in the original stated principal amount of $25,425,000 (as the same may be increased from time to time in accordance with the terms of the New Indenture) issued by the Company to Taberna VII, a copy of which is attached hereto as Exhibit B-4 (“**Note 4**”);

J. On the terms and subject to the conditions set forth in this Agreement, the Company and Taberna have agreed to exchange the Original Preferred Securities for the Securities.

NOW, THEREFORE, in consideration of the mutual agreements and subject to the terms and conditions herein set forth, the parties hereto agree as follows:

1 . **Definitions**. This Agreement, the New Indenture, the Securities, that certain Pledge and Security Agreement from the Company in favor of the Trustee, and that certain Pledge, Security Agreement and Account Control Agreement from NIC TP LLC in favor of the Trustee and acknowledged and agreed to by the Company, each entered into as of the date hereof, are collectively referred to herein as the “**Operative Documents**.” All other capitalized terms used but not defined in this Agreement shall have the respective meanings ascribed thereto in the New Indenture.

“**1934 Act Regulations**” has the meaning set forth in Section 4(z).

“**1934 Act Reports**” has the meaning set forth in Section 4(z).

“Affiliate” of any specified person means any other Person directly or indirectly Controlled, Controlling or Controlled by, or under direct or common Control with such specified Person.

“**Arbitrator**” has the meaning set forth in Section 4(l).

“**Bankruptcy Code**” means the Bankruptcy Reform Act of 1978, 11 U.S.C. §§101 et seq., as amended.

“**Benefit Plan**” means an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, a “plan” as defined in Section 4975 of the Code or any entity whose assets include the assets of any such “employee benefit plan” or “plan” for purposes of Section 3(42) of ERISA and U.S. Department of Labor Regulations promulgated thereunder at 29 C.F.R. Section 2510.3-101.

"**BNYM**" has the meaning set forth in the Recitals.

"**CDO Trustee**" has the meaning set forth in Section 2(b)(i).

"**Code**" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated under it.

"**Closing Date**" has the meaning set forth in Section 2(b).

"**Closing Room**" has the meaning set forth in Section 2(b).

"**Company**" has the meaning set forth in the introductory paragraph hereof.

"**Company Counsel**" has the meaning set forth in Section 3(b).

"**Commission**" has the meaning set forth in Section 4(v).

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

"**Delaware Trustee**" has the meaning set forth in the Recitals.

"**Environmental Law**" has the meaning set forth in Section 4(ll).

"**Environmental Laws**" shall have the correlative meaning.

"**Equity Interests**" means with respect to any Person (a) if such a Person is a partnership, the partnership interests (general or limited) in a partnership, (b) if such Person is a limited liability company, the membership interests in a limited liability company and (c) if such Person is a corporation, the shares or stock interests (both common stock and preferred stock) in a corporation.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated under it.

"**Exchange**" has the meaning set forth in Section 2(b).

"**Exchange Act**" has the meaning set forth in Section 4(j).

"**Existing Indenture**" has the meaning set forth in the Recitals.

"**Existing Indenture Trustee**" has the meaning set forth in the Recitals.

"**Fee Agreement**" means that certain Fee Agreement dated the date hereof between the Company and BNYM.

"**Financial Statements**" has the meaning set forth in Section 4(w).

"**GAAP**" has the meaning set forth in Section 4(w).

"**Governmental Entities**" has the meaning set forth in Section 4(o).

"**Governmental Licenses**" has the meaning set forth in Section 4(r).

"**Hazardous Materials**" has the meaning set forth in Section 4(kk).

"**Holder**" has the meaning set forth in the New Indenture.

"**Impairment**" means any claim, counterclaim, setoff, defense, action, demand, litigation (including administrative proceedings or derivative actions), encumbrance, right (including expungement, avoidance, reduction, contractual or equitable subordination, or otherwise) or defect.

"**Indemnified Party**" has the meaning set forth in Section 8(a). '**Indemnified Parties**" shall have the correlative meaning.

"**Investment Company Act**" has the meaning set forth in Section 4(j).

"**Lien**" has the meaning set forth in Section 4(o).

"**Material Adverse Effect**" means a material adverse effect on or change in the condition (financial or otherwise), earnings, business, liabilities or assets of the Company and its subsidiaries taken as a whole.

"**New Indenture**" has the meaning set forth in the Recitals.

"**New Indenture Trustee**" has the meaning set forth in the Recitals.

"**Note 1**" has the meaning set forth in the Recitals.

"**Note 2**" has the meaning set forth in the Recitals.

"**Note 3**" has the meaning set forth in the Recitals.

"**Note 4**" has the meaning set forth in the Recitals.

"**Original Preferred Securities**" has the meaning set forth in the Recitals.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"**Property**" means the Trump International Hotel and Tower Chicago.

"**Property Trustee**" has the meaning set forth in the Recitals.

"**Regulation D**" has the meaning set forth in Section 4(h).

"**Repayment Event**" has the meaning set forth in Section 4(o).

"**Rule 144A(d)(3)**" has the meaning set forth in Section 4(j).

"**Securities**" has the meaning set forth in the Recitals.

"**Securities Act**" means the Securities Act of 1933, 15 U.S.C. §§77a et seq., as amended, and the rules and regulations promulgated under it.

"**Significant Subsidiary**" means any significant subsidiary of the Company within the definition of such term in Regulation S-X. "**Significant Subsidiaries**" means, collectively, each and every Significant Subsidiary.

"**Subordinated Note**" has the meaning set forth in the Recitals.

"**Taberna**" has the meaning set forth in the introductory paragraph hereof.

"**Taberna IV**" has the meaning set forth in the introductory paragraph hereof.

"**Taberna V**" has the meaning set forth in the introductory paragraph hereof.

"**Taberna VI**" has the meaning set forth in the introductory paragraph hereof.

"**Taberna VII**" has the meaning set forth in the introductory paragraph hereof.

"**Taberna Transferred Rights**" means any and all of Taberna's right, title, and interest in, to and under the Original Preferred Securities, together with the following:

(i) the Existing Indenture and Trust Agreement;

(ii) all amounts payable to Taberna under the Original Preferred Securities, the Existing Indenture and/or the Trust Agreement, excluding, however, amounts payable on account of interest for the period from January 30, 2009 through April 29, 2009;

(iii) all claims (including "claims" as defined in Bankruptcy Code §101(5)), suits, causes of action, and any other right of Taberna, whether known or unknown, against the Company or any of its Affiliates (including the Trusts), or their respective agents, representatives, contractors, advisors, directors, officers and trustees, or any other entity or individual that in any way is based upon, arises out of or is related to any of the foregoing, including all claims (including contract claims, tort claims, malpractice claims, and claims under any law governing the exchange of, purchase and sale of, or indentures for, securities), suits, causes of action, and any other right of Taberna against any attorney, accountant, financial advisor, or other entity arising under or in connection with the Original Preferred Securities, the Existing Indenture, the Trust Agreement or the transactions related thereto or contemplated thereby (but excluding the transactions contemplated under this Agreement);

(iv) all guarantees and all collateral and security of any kind for or in respect of the foregoing;

(v) all cash, securities, or other property, and all setoffs and recoupments, to be received, applied, or effected by or for the account of Taberna under the Original Preferred Securities, other than fees, costs and expenses payable to Taberna hereunder and all cash, securities, interest, dividends, and other property that may be exchanged for, or distributed or collected with respect to, any of the foregoing; and

(vi) all proceeds of the foregoing.

"**Tax Returns**" has the meaning set forth in Section 4(ee).

"**Trust I**" has the meaning set forth in the Recitals.

"**Trust Agreement**" has the meaning set forth in the Recitals.

2. **Exchange of Original Preferred Securities for Securities**.

(a) The Company agrees to issue the Securities in accordance with the New Indenture and has requested that Taberna accept such Securities in exchange for the Original Preferred Securities, and Taberna hereby accepts such Securities in exchange for the Original Preferred Securities upon the terms and conditions set forth herein.

(b) The closing of the exchange contemplated herein shall occur at the offices of Nixon Peabody, LLP in New York, New York (the "**Closing Room**"), or such other place as the parties hereto and BNYM shall agree, at 11:00 a.m. New York time, on April 30, 2009 or such later date as the parties may agree (such date and time of delivery the "**Closing Date**"). The Company and Taberna hereby agree that the exchange (the "**Exchange**") will occur in accordance with the following requirements:

(i) Taberna Capital Management, LLC (as collateral manager for each of the Taberna entities) shall have delivered an issuer order instructing each trustee (in each such capacity, a "**CDO Trustee**") under the applicable indenture pursuant to which such CDO Trustee serves as trustee for the holders of the Original Preferred Securities to exchange the Original Preferred Securities for the Securities and to deliver the Original Preferred Securities to the Property Trustee for cancellation.

(ii) The Original Preferred Securities and the Securities shall have been delivered to the Closing Room, copies of which shall have previously been made available for inspection, if so requested.

(iii) Company shall have directed the New Indenture Trustee to authenticate the Securities and deliver them to the applicable CDO Trustee, as follows: (i) Note 1 to Taberna IV, (ii) Note 2 to Taberna V, (iii) Note 3 to Taberna VI, and (iv) Note 4 to Taberna VII.

(iv) New Indenture Trustee shall have authenticated the Securities in accordance with the terms of the New Indenture and delivered them as provided above.

(v) Property Trustee shall have obtained the Original Preferred Securities and shall promptly thereafter, if requested by the Company, cancel them.

(vi) Simultaneously with the occurrence of the events described in subsections (iv) and (v) hereof, (A) each Taberna Entity holding the applicable Original Preferred Securities irrevocably transfers, assigns, grants and conveys the related Taberna Transferred Rights to the Company and the Company assumes all rights and obligations of Taberna with respect to the Original Preferred Securities and the Taberna Transferred Rights and (B) each Holder shall be entitled to all of the rights, title and interest of a Holder of the Securities under the terms of the Securities, the New Indenture and any other Operative Documents.

(vii) the Company shall have paid to the BNYM all of such party's legal fees, costs and other expenses in connection with the Exchange as specified in the Fee Agreement, as well as all other accrued and unpaid fees, costs and expenses under the Existing Indenture and the Trust Agreement, if any.

(viii) The Company shall have paid to the Trustee, for application upon the Original Preferred Securities and for distribution to the applicable Taberna entities holding such Original Preferred Securities pursuant to the terms of the Existing Indenture, all accrued interest for the period commencing on the most recent interest payment date under the Original Preferred Securities and continuing through and including April 29, 2009 at an effective interest rate equal to one percent (1%) per annum on a principal balance of $101,700,000.00; provided, that interest accruing and payable solely for the period from January 30, 2009 through and including April 29, 2009 which are in excess of such amount shall be waived.

(ix) The Operative Documents and the Joint Direction and Release by and among the Company, Taberna and the Trustee shall have been fully executed and originals thereof delivered to the Closing Room for release upon the Closing Date.

3. **Conditions Precedent**. The obligations of the parties under this Agreement are subject to the following conditions precedent:

(a) The representations and warranties contained herein shall be accurate as of the date of delivery of the Securities and the parties shall be prepared to complete all actions and consummate the Exchange as set forth in Section 2(b).

(b) Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Company and DLA Piper LLP (US), special Maryland counsel for the Company (collectively, the "**Company Counsel**"), shall have delivered one or more opinions, dated the Closing Date, addressed to each Taberna Entity and its successors and assigns and to the New Indenture Trustee, in substantially the form set out in Annex A hereto. In rendering its opinion, the Company Counsel may rely as to factual matters upon certificates or other documents furnished by officers, directors and trustees of the Company and by government officials; *provided*, *however*, that copies of any such certificates or documents are delivered to Taberna and by and upon such other documents as such counsel may, in its reasonable opinion, deem appropriate as a basis for Company Counsel's opinion or opinions. Company Counsel may specify the relevant jurisdiction or jurisdictions in which it is admitted to practice and that it is not admitted to practice in any other jurisdiction and is not an expert in the law of any other jurisdiction. Such Company Counsel Opinion shall not state that it is to be governed or qualified by, or that it is otherwise subject to, any treatise, written policy or other document relating to legal opinions, including, without limitation, the Legal Opinion Accord of the ABA Section of Business Law (1991).

(c) Taberna shall have been furnished the opinion of Company Counsel, dated as of the Closing Date, addressed to the Taberna entities, the New Indenture Trustee and their respective successors and assigns (excluding the Company, its subsidiaries and/or its Affiliates), in substantially the form set out in Annex B hereto.

(d) Taberna shall have received the opinion of Gardere Wynne Sewell LLP, special counsel for the New Indenture Trustee, dated as of the Closing Date, addressed to the Taberna, in substantially the form set out in Annex C hereto.

(e) The Company shall have furnished to the Holders of the Securities a certificate of the Company, signed by the Chief Executive Officer, President or an Executive Vice President, and Chief Financial Officer, Treasurer or Assistant Treasurer of the Company, dated as of the Closing Date, as to (i) and (ii) below:

(i) the representations and warranties in this Agreement and the New Indenture are true and correct on and as of the Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date; and

(ii) since the date of the Financial Statements, there has been no Material Adverse Effect.

If any of the conditions specified in this Section 3 shall not have been fulfilled when and as provided in this Agreement, or if any of the opinions, certificates and documents mentioned above or elsewhere in this Agreement shall not be reasonably satisfactory in form and substance to Taberna or its counsel, this Agreement and any obligations of Taberna hereunder, whether as holders of the Original Preferred Securities or as prospective Holders of the Securities, may be canceled at, or at any time prior to, the Closing Date by Taberna. Notice of such cancellation shall be given to the Company in writing or by e-mail or facsimile.

Each certificate signed by any officer of the Company and delivered in connection with the Operative Documents and the transactions contemplated hereby and thereby shall be deemed to be a representation and warranty of the Company and not by such officer in any individual capacity.

4. **Representations and Warranties of the Company**. The Company represents and warrants, as of the date hereof, and agrees with Taberna, as holders of the Original Preferred Securities and with the Holders of the Securities, as follows:

(a) It (i) is duly incorporated and validly existing under the laws of the State of Maryland, (ii) is in good standing under such laws and (iii) has full power and authority to execute, deliver and perform its obligations under this Agreement and the other Operative Documents.

(b) It is an "accredited investor" as defined in Rule 501 under the Securities Act. Without characterizing the Original Preferred Securities or any of the Taberna Transferred Rights as a "security" within the meaning of applicable securities laws, it is not acquiring the Original Preferred Securities or the Taberna Transferred Rights with a view towards the sale or distribution thereof in violation of the Securities Act.

(c) None of the Securities, the New Indenture, or the Exchange is or may be subject to any Impairment. The Company has no current intention to initiate any bankruptcy or insolvency proceedings. The Company (i) has not entered into the Exchange or any Operative Documents with the actual intent to hinder, delay, or defraud any creditor and (ii) received reasonably equivalent value in exchange for its obligations under the Operative Documents.

(d) Reserved.

(e) It (i) is a sophisticated entity with respect to the Exchange, (ii) has such knowledge and experience, and has made investments of a similar nature, so as to be aware of the risks and uncertainties inherent in the Exchange and (iii) has independently and without reliance upon Taberna, Taberna Capital Management, LLC or BNYM or any of their Affiliates, and based on such information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement, except that it has relied upon Taberna's express representations, warranties, covenants and agreements in this Agreement. The Company acknowledges that none of Taberna, Taberna Capital Management, LLC or Trustee or any of their respective Affiliates has given it any investment advice, credit information or opinion on whether the Exchange is prudent.

(f) It has not engaged any broker, finder or other entity acting under the authority of it or any of its affiliates that is entitled to any broker's commission or other fee in connection with the transaction for which Taberna, any Holder, BNYM or any of their affiliates could be responsible.

(g) No interest in the Taberna Transferred Rights is being acquired by or on behalf of an entity that is, or at any time while the Taberna Transferred Rights are held thereby will be, one or more Benefit Plans.

(h) Neither the Company nor any of its "Affiliates" (as defined in Rule 501(b) of Regulation D ("**Regulation D**") under the Securities Act (as defined below)), nor any person acting on its or their behalf, has, directly or indirectly, made offers or sales of any security, or solicited offers to buy any security, under circumstances that would require the registration of any of the Securities under the Securities Act.

(i) Intentionally omitted.

(j) The Securities (i) are not and have not been listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or quoted on a U.S. automated inter-dealer quotation system and (ii) are not of an open-end investment company, unit investment trust or face-amount certificate company that are, or are required to be, registered under Section 8 of the Investment Company Act of 1940, as amended (the "**Investment Company Act**"), and the Securities otherwise satisfy the eligibility requirements of Rule 144A(d)(3) promulgated pursuant to the Securities Act ("**Rule 144A(d)(3)**").

(k) Neither the Company nor any of its Affiliates, nor any person acting on its or their behalf, has engaged, or will engage, in any "directed selling efforts" within the meaning of Regulation S under the Securities Act with respect to the Securities.

(l) The Company is not, and immediately following consummation of the transactions contemplated hereby, will not be, an "investment company" or an entity "controlled" by an "investment company," in each case within the meaning of Section 3(a) of the Investment Company Act.

(m) Each of this Agreement, the New Indenture and that certain Pledge and Security Agreement entered into in connection herewith and therewith and the consummation of the transactions contemplated herein and therein have been duly authorized by the Company and, on the Closing Date, will have been duly executed and delivered by the Company, and, assuming due authorization, execution and delivery by Taberna and/or the New Indenture Trustee, as applicable, will be a legal, valid and binding obligations of the Company enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

(n) The Securities have been duly authorized by the Company and, on the Closing Date, will have been duly executed and delivered to the New Indenture Trustee for authentication in accordance with the New Indenture and, when authenticated in the manner provided for in the New Indenture and delivered to the Holders, will constitute legal, valid and binding obligations of the Company entitled to the benefits of the New Indenture, enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

(o) Neither the issue of the Securities and exchange of the Securities for the Original Preferred Securities, nor the execution and delivery of and compliance with the Operative Documents by the Company, nor the consummation of the transactions contemplated herein or therein, (i) will conflict with or constitute a violation or breach of (x) the charter or bylaws or similar organizational documents of the Company or any Significant Subsidiary of the Company or (y) any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, governmental authority, agency or instrumentality or court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or their respective properties or assets (collectively, the "**Governmental Entities**"), (ii) will conflict with or constitute a violation or breach of, or a default or Repayment Event under, or result in the creation or imposition of any pledge, security interest, claim, lien or other encumbrance of any kind (each, a "**Lien**") upon any property or assets of the Company or any if its Significant Subsidiaries pursuant to any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which (A) the Company or any of its Significant Subsidiaries is a party or by which it or any of them may be bound, or (B) to which any of the property or assets of any of them is subject, or any judgment, order or decree of any Governmental Entity or arbitrator having jurisdiction over the Company or any of its subsidiaries or their respective properties or assets (an "**Arbitrator**"), except for Liens contemplated by the Operative Documents, or (iii) will require the consent, approval, authorization or order of any court or Governmental Entity, except, in the case of clause (i)(y), (ii), or (iii) for such conflicts, breaches, violations, defaults, Repayment Events (as defined below) or Liens which (X) would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by the Operative Documents and (Y) would not, singly or in the aggregate, have a Material Adverse Effect. As used herein, a "**Repayment Event**" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its Significant Subsidiaries prior to its scheduled maturity.

(p) The Company has all requisite power and authority to own, lease and operate its properties and assets and conduct the business it transacts and proposes to transact, and is duly qualified to transact business and is in good standing in each jurisdiction where the nature of its activities requires such qualification, except where the failure of the Company to have such power and authority or be so qualified would not, singly or in the aggregate, have a Material Adverse Effect.

(q) Each Significant Subsidiary of the Company is listed on Schedule 1 attached hereto, which the Company represents is true, complete and correct. Each Significant Subsidiary is a corporation, partnership or limited liability company duly and properly incorporated or organized or formed, as the case may be, validly existing and, with respect to any such corporation, in good standing under the laws of the jurisdiction in which it is chartered or organized or formed, with all requisite power and authority to own, lease and operate its properties and conduct the business it transacts. Each Significant Subsidiary is duly qualified to transact business in each jurisdiction where the nature of its activities requires such qualification, except where the failure to be so qualified would not, singly or in the aggregate, have a Material Adverse Effect. No Significant Subsidiary of the Company (other than a taxable REIT subsidiary, if any,) is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or to which it or its assets is subject, other than as required by applicable law, from paying any dividends to the Company, from making any other distribution on such Significant Subsidiary's capital stock or other Equity Interests, from repaying to the Company any loans or advances to such Significant Subsidiary from the Company or from transferring any of such Significant Subsidiary's wholly owned properties or assets to the Company or any other subsidiary of the Company except (i) as disclosed to Taberna in writing or in the Company's public filings or (ii) with respect to limitations on payments to the Company currently in effect on the Company's collateralized bond obligations, residential mortgage backed securities and manufactured housing loans as set forth on Schedule 2.

(r) The Company and each of the Company's subsidiaries hold all necessary approvals, authorizations, orders, licenses, consents, registrations, qualifications, certificates and permits (collectively, the "**Governmental Licenses**") of and from Governmental Entities necessary to conduct their respective businesses as now being conducted, and neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any such Government License, except where the failure to be so licensed or approved or the receipt of an unfavorable decision, ruling or finding, would not, singly or in the aggregate, have a Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except where the invalidity or the failure of such Governmental Licenses to be in full force and effect, would not, singly or in the aggregate, have a Material Adverse Effect; and the Company and its subsidiaries are in compliance with all applicable laws, rules, regulations, judgments, orders, decrees and consents, except where the failure to be in compliance would not, singly or in the aggregate, have a Material Adverse Effect.

(s) All of the issued and outstanding Equity Interests of the Company and each of its Significant Subsidiaries are validly issued, fully paid and non-assessable; all of the issued and outstanding Equity Interests of each subsidiary of the Company that are owned by the Company, directly or through subsidiaries, are free and clear of any Lien or claim; and none of the issued and outstanding Equity Interests of the Company or any subsidiary was issued in violation of any preemptive or similar rights arising by operation of law, under the charter or by-laws of such entity or under any agreement to which the Company or any of its subsidiaries is a party.

(t) Neither the Company nor any of its subsidiaries is (i) in violation of its respective charter or by-laws or similar organizational documents or (ii) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which the Company or any such Significant Subsidiary is a party or by which it or any of them may be bound or to which any of the property or assets of any of them is subject, except, in the case of clause (ii), where such violation or default would not, singly or in the aggregate, have a Material Adverse Effect.

(u) There is no action, suit or proceeding before or by any Governmental Entity or Arbitrator, now pending or, to the knowledge of the Company after due inquiry, threatened against or affecting the Company or any of its subsidiaries, except for such actions, suits or proceedings as disclosed in the Company's reports filed with the Commission pursuant to the Exchange Act or in Schedule II of that certain Pledge and Security Agreement entered into in connection herewith, or that, if adversely determined, would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by the Operative Documents or have a Material Adverse Effect; and, except as disclosed in the Company's Exchange Act filings, the aggregate of all pending legal or governmental proceedings to which the Company or any of its subsidiaries is a party or of which any of their respective properties or assets is subject, including ordinary routine litigation incidental to the business, are not expected to result in a Material Adverse Effect.

(v) The accountants of the Company who certified the Financial Statements(defined below) are independent public accountants of the Company and its subsidiaries within the meaning of the Securities Act, and the rules and regulations of the Securities and Exchange Commission (the "**Commission**") thereunder.

(w) The audited consolidated financial statements (including the notes thereto) and schedules of the Company and its consolidated subsidiaries for the fiscal year ended December 31, 2008, (the "**Financial Statements**") filed by the Company in its Annual Report on Form 10-K on March 16, 2009 are the most recent available audited consolidated financial statements of the Company and its consolidated subsidiaries, respectively, and fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("**GAAP**"), the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the dates and for the periods therein specified. Such consolidated financial statements and schedules have been prepared in accordance with GAAP consistently applied throughout the periods involved (except as otherwise noted therein).

(x) Neither the Company nor any of its subsidiaries has any material liability, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, including any liability for taxes, except for (i) liabilities set forth in the Financial Statements or the Interim Financial Statements and (ii) normal fluctuations in the amount of the liabilities referred to in clause (i) above occurring in the ordinary course of business of the Company and all of its subsidiaries since the date of the most recent balance sheet included in such Financial Statements and (iii) liabilities that would not, singly or in the aggregate, have a Material Adverse Effect.

(y) Since the date of the Financial Statements, there has not been (A) any Material Adverse Effect or (B) any dividend or distribution of any kind declared, paid or made by the Company on any class of its Equity Interests.

(z) The documents of the Company filed with the Commission in accordance with the Exchange Act, from and including the commencement of the fiscal year covered by the Company's most recent Annual Report on Form 10-K, at the time they were filed by the Company with the Commission (collectively, the *"1934 Act Reports"),* complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder (the *"1934 Act Regulations"),* and, did not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company is in compliance in all material respects with all currently applicable requirements of the Exchange Act that were added by the Sarbanes-Oxley Act of 2002.

(aa) No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent, except those which would not, singly or in the aggregate, have a Material Adverse Effect.

(bb) No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity, other than those that have been made or obtained, is necessary or required for the performance by the Company of its obligations under the Operative Documents, as applicable, or the consummation by the Company of the transactions contemplated by the Operative Documents.

(cc) The Company and each of its Significant Subsidiaries has good and valid title to all of its respective real and personal property, in each case free and clear of all Liens and defects, except for Liens for Taxes not yet due or payable and those Liens securing debt in the ordinary course of its business and that would not, singly or in the aggregate, have a Material Adverse Effect; and all of the leases and subleases under which the Company or any of its Significant Subsidiaries holds properties are in full force and effect, except where the failure of such leases and subleases to be in full force and effect would not, singly or in the aggregate, have a Material Adverse Effect, and neither the Company nor any of its Significant Subsidiaries has any notice of any claim of any sort that has been asserted by anyone adverse to the rights of the Company or any Significant Subsidiary under any such leases or subleases, or affecting or questioning the rights of such entity to the continued possession of the leased or subleased premises under any such lease or sublease, except for such claims that would not, singly or in the aggregate, have a Material Adverse Effect.

(dd) Commencing with its taxable year ended December 31, 2002, the Company has been, and upon the completion of the transactions contemplated hereby, the Company will continue to be, organized and operated in conformity with the requirements for qualification and taxation as a real estate investment trust (a *"REIT')* under Sections 856 through 860 of the Code for so long as the judgment of the Company's board of directors is that the Company should maintain its status as a REIT, and the Company's organizational structure and proposed method of operation will enable it to continue to meet the requirements for qualification and taxation as a REIT under the Code for so long as the judgment of the Company's Board of Directors is that the Company should maintain its status as a REIT, and no actions have been taken (or not taken which are required to be taken) which would cause such qualification to be lost. The Company expects to continue to be organized and to operate in a manner so as to qualify as a REIT in the taxable year ending December 31, 2008 and succeeding taxable years for so long as the judgment of the Company's Board of Directors is that the Company should maintain its status as a REIT.

(ee) The Company and each Significant Subsidiary has timely and duly filed (or filed extensions thereof (and which extensions are presently in effect)) all material Tax Returns (as defined below) required to be filed by them, and all such Tax Returns are true, correct and complete in all material respects. The Company and each Significant Subsidiary has timely and duly paid in full all material Taxes (as defined below) required to be paid by them (whether or not such amounts are shown as due on any Tax Return). There are no federal, state, or other Tax audits or deficiency assessments proposed in writing or pending with respect to the Company or any Significant Subsidiary, and no such audits or assessments are threatened in writing to the Company. As used herein, the terms "*Tax*" or "*Taxes*" mean (i) all federal, state, local, and foreign taxes, and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax, or penalties applicable thereto, imposed by any Governmental Entity, and (ii) all liabilities in respect of such amounts arising as a result of being a member of any affiliated, consolidated, combined, unitary or similar group, as a successor to another person or by contract. As used herein, the term "**Tax Returns**" means all federal, state, local, and foreign Tax returns, declarations, statements, reports, schedules, forms, and information returns and any amendments thereto filed or required to be filed with any Governmental Entity.

(ff) To the knowledge of the Company, interest payable by the Company on the Securities is deductible by the Company for United Stated Federal income Tax purposes and there are no rulemaking or similar proceedings before the U.S. Internal Revenue Service or comparable federal, state, local or foreign government bodies which involve or, to the knowledge of the Company, affect the Company or any subsidiary, which, if the subject of an action unfavorable to the Company or any subsidiary, could result in a Material Adverse Effect.

(gg) The books, records and accounts of the Company and its Significant Subsidiaries accurately and fairly reflect, in reasonable detail, the transactions in, and dispositions of, the assets of, and the results of operations of, the Company and its subsidiaries. The Company and each of its subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance regarding the Company and each of its consolidated subsidiaries that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(hh) The Company and its Significant Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts in all material respects as are customary in the businesses in which they are engaged (the ownership of real estate related loans and securities) after giving effect to the transactions contemplated hereby. All policies of insurance insuring the Company or any of its Significant Subsidiaries' respective businesses, assets, employees, officers and directors are in full force and effect. The Company and each of the Significant Subsidiaries are in compliance with the terms of such policies and instruments in all material respects. Neither the Company nor any Significant Subsidiary has reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be available and necessary to continue its business at a cost that would not have a Material Adverse Effect, except for such failures to renew or obtain such insurance coverage due to conditions then applicable to the insurance industry or the REIT industry in general. Within the past twelve months, neither the Company nor any Significant Subsidiary has been denied any insurance coverage it has sought or for which it has applied.

(ii) Neither the Company and its Significant Subsidiaries, nor, to the knowledge of the Company, any person acting on behalf of the Company and/or its Significant Subsidiaries including, without limitation, any director, officer, manager, agent or employee of the Company or its Significant Subsidiaries has, directly or indirectly, while acting on behalf of the Company and/or its Significant Subsidiaries (i) used any corporate, partnership or company funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (ii) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns from corporate, partnership or company funds; (iii) violated any provision of the Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any other unlawful payment.

(jj) The information provided by the Company pursuant to the Operative Documents does not, as of the date hereof, and will not as of the Closing Date, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(kk) (i) the Company and its subsidiaries have been and are in material compliance with Environmental Laws (as defined below) applicable to the Trump Property, (ii) none of the Company, any of its subsidiaries or, to the best of the Company's knowledge, any other owners of any of the Trump Property at any time released (as such term is defined in CERCLA (as defined below)) or otherwise disposed of Hazardous Materials (as defined below) on, to, in, under or from the Trump Property other than in compliance with all applicable Environmental Laws, (iii) neither the Company nor any of its subsidiaries has used nor intends to use the Trump Property other than in compliance with applicable Environmental Laws, (iv) neither the Company nor any of its subsidiaries has received any notice of, or have any knowledge of any occurrence or circumstance which, with notice or passage of time or both, would give rise to a claim under or pursuant to any Environmental Law with respect to the Trump Property, (v) the Trump Property is not included or, to the best knowledge of the Company, proposed for inclusion on the National Priorities List issued pursuant to CERCLA by the United States Environmental Protection Agency or, to the best of the Company's knowledge, proposed for inclusion on any similar list or inventory issued pursuant to any other Environmental Law or issued by any other Governmental Entity, (vi)intentionally omitted, (vii) no lien has been imposed on the Trump Property by any Governmental Entity in connection with the presence on or off such property of any Hazardous Material or with respect to an Environmental Law, and (viii) none of the Company, any of its Significant Subsidiaries or, to the best knowledge of the Company, any other person or entity for whose conduct any of them is or may be held responsible, has entered into or been subject to any consent decree, compliance order, or administrative order in connection with an Environmental Law with respect to the Trump Property.

As used herein, "**Hazardous Materials**" shall include, without limitation, any flammable materials, explosives, radioactive materials, hazardous materials, hazardous substances, hazardous wastes, toxic substances or related materials, asbestos, petroleum, petroleum products and any hazardous material as defined by any federal, state or local environmental law, statute, ordinance, rule or regulation, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675 ("*CERCLA*"), the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101-5127, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901-6992k, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001-11050, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136-136y, the Clean Air Act, 42 U.S.C. §§ 7401-7642, the Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. §§ 1251-1387, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26, and the Occupational Safety and Health Act, 29 U.S.C. §§ 651-678, and any analogous state laws, as any of the above may be amended from time to time and in the regulations promulgated pursuant to each of the foregoing (including environmental statutes and laws not specifically defined herein) (individually, an "**Environmental Law**" and collectively, the "**Environmental Laws**") or by any Governmental Entity.

Except as expressly stated in the Operative Documents or any of the other documents delivered by the company in connection herewith, the Company makes no representations or warranties, express or implied, with respect to the Exchange, the Taberna Transferred Rights, the Original Preferred Securities, the Existing Indenture or any other matter.

5. **Representations and Warranties of Taberna**. Each Taberna Entity, for itself, represents and warrants to, and agrees with, the Company as follows:

(a) It is a company duly formed, validly existing and in good standing under the laws of the jurisdiction in which it is organized with all requisite (i) power and authority to execute, deliver and perform under Operative Documents to which it is a party, to make the representations and warranties specified herein and therein and to consummate the transactions contemplated in the Operative Documents.

(b) This Agreement and the consummation of the transactions contemplated herein has been duly authorized by it and, on the Closing Date, will have been duly executed and delivered by it and, assuming due authorization, execution and delivery by the Company and Trustee of the Operative Documents to which each is a party, will be a legal, valid and binding obligation of such Taberna Entity, enforceable against such Taberna in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

(c) No filing with, or authorization, approval, consent, license, order registration, qualification or decree of, any Governmental Entity or any other Person, other than those that have been made or obtained, is necessary or required for the performance by such Taberna Entity of its obligations under this Agreement or to consummate the transactions contemplated herein. Neither the execution and delivery of this Agreement, nor the transactions contemplated herein, will conflict with or result in any violation of (i) any provision of the organizational documents of any Taberna Entity or (ii) any statute, law, rule or regulation applicable to any Taberna Entity.

(d) It is the legal and beneficial owner of its respective Original Preferred Securities and the related Taberna Transferred Rights and shall deliver such Original Preferred Securities free and clear of any Lien created by such Taberna Entity.

(e) There is no action, suit or proceeding before or by any Governmental Entity, arbitrator or court, domestic or foreign, now pending or, to its knowledge, threatened against or affecting it, except for such actions, suits or proceedings that, if adversely determined, would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by the Operative Documents.

(f) The outstanding principal amount of its respective Original Preferred Securities is the face amount as set forth in such Original Preferred Securities.

(g) It is aware that the Securities have not been and will not be registered under the Securities Act and may not be offered or sold within the United States or to "U.S. persons" (as defined in Regulation S under the Securities Act) unless registered with the Commission, except in accordance with Rule 903 of Regulation S under the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act.

(h) It is an "accredited investor," as such term is defined in Rule 501(a) of Regulation D under the Securities Act and was not organized for the purpose of acquiring any of the Securities. Without characterizing the Original Preferred Securities or the Taberna Transferred Rights as a "security" within the meaning of applicable securities laws, it has not made any offers to sell, or solicitations of any offers to buy, all or any portion of the Original Preferred Securities or Taberna Transferred Rights in violation of any applicable securities laws.

(i) Neither it nor any of its Affiliates, nor any person acting on its or its Affiliates' behalf has engaged, or will engage, any form of "general solicitation or general advertising" (within the meaning of Regulation D under the Securities Act) in connection with any offer or sale of the Securities.

(j) It understands and acknowledges that (i) no public market exists for any of the Securities and that it is unlikely that a public market will ever exist for the Securities, (ii) such Holder is purchasing the Securities for its own account, for investment and not with a view to, or for offer or sale in connection with, any fractionalization, division or distribution thereof in violation of the Securities Act or other applicable securities laws, subject to any requirement of law that the disposition of its property be at all times within its control and subject to its ability to resell such Securities pursuant to an effective registration statement under the Securities Act or pursuant to an exemption therefrom or in a transaction not subject thereto, and it agrees to the legends and transfer restrictions applicable to the Securities contained in the New Indenture, and (iii) it has had the opportunity to ask questions of, and receive answers and request additional information from, the Company and is aware that it may be required to bear the economic risk of an investment in the Securities. It has not received and is not relying on any representations of the Company other than as set forth in the Operative Documents, or in any public filings. It has not entered into any contract to sell, transfer or pledge to any person the Securities that it is acquiring.

(k) It has not engaged any broker, finder or other entity acting under its authority that is entitled to any broker's commission or other fee in connection with this Agreement and the consummation of transactions contemplated in this Agreement and the New Indenture for which the Company could be responsible.

(l) It (i) is a sophisticated entity with respect to the Exchange, (ii) has such knowledge and experience, and has made investments of a similar nature, so as to be aware of the risks and uncertainties inherent in the Exchange and (iii) has independently and without reliance upon the Company or any of their affiliates, and based on such information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement, except that it has relied upon the Company's express representations, warranties, covenants and agreements in the Operative Documents and the other documents delivered by the Company in connection therewith. It acknowledges that the Company has not given it any investment advice or opinion on whether the Exchange is prudent.

(m) It understands that the Exchange contemplated herein will be made in reliance upon an exemption from registration under the Securities Act pursuant to Section 4(2) thereof.

Except as expressly stated in this Agreement, Taberna make no representations or warranties, express or implied, with respect to the Exchange, the Taberna Transferred Rights, the Original Preferred Securities, the Existing Indenture, or any other matter.

6. **Covenants and Agreements of the Company**. The Company agrees with the Taberna and the Holders as follows:

(a) The Company has taken all action reasonably necessary or appropriate to cause its representations and warranties contained in Section 4 hereof to be true as of the Closing Date and giving effect to the Exchange.

(b) The Company will use commercially reasonable efforts to arrange for the qualification of the Securities for sale under the laws of such jurisdictions as the Holders of the Securities may designate and will maintain such qualifications in effect so long as required for the sale of the Securities; provided that the Company shall not be required to qualify as a foreign corporation or take any action that would subject it to general service of process in any jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation. The Company will promptly advise the Holders of the Securities of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(c) Reserved.

(d) The Company will use its reasonable best efforts to continue to meet the requirements to qualify as a REIT under sections 856 through 8560 of the Code, effective for the taxable year ending December 31, 2008 (and each fiscal quarter of such year) and succeeding taxable years for so long as the judgment of the Company's Board of Directors is that the Company should maintain its status as a REIT.

(e) The Company will not, and will not permit any of its Affiliates or any person acting on its or their behalf to, directly or indirectly, make offers or sales of any security, or solicit offers to buy any security, under circumstances that would require the registration of any of the Securities under the Securities Act.

(f) The Company will not, and will not permit any of its Affiliates or any person acting on its or their behalf to, engage in (i) any form of "general solicitation or general advertising" (within the meaning of Regulation D), or (ii) any "directed selling efforts" within the meaning of Regulation S under the Securities Act, in connection with any offer or sale of the any of the Securities.

(g) So long as any of the Securities are outstanding, (i) the Securities shall not be listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted in a U.S. automated inter-dealer quotation system and (ii) the Company shall not be an open-end investment company, unit investment trust or face-amount certificate company that is, or is required to be, registered under Section 8 of the Investment Company Act, and, the Securities shall otherwise satisfy the eligibility requirements of Rule 144A(d)(3).

(h) Intentionally omitted.

(i) The Company will, during any period in which it is not subject to and in compliance with Section 13 or 15(d) of the Exchange Act, or it is not exempt from such reporting requirements pursuant to and in compliance with Rule 12g3-2(b) under the Exchange Act, provide to each Holder of the Securities, upon the request of such Holder, any information required to be provided by Rule 144A(d)(4) under the Securities Act. This covenant is intended to be for the benefit of the Holders of the Securities.

(j) The Company will not, until one hundred eighty (180) days following the Closing Date, without the Holders' prior written consent, offer, sell, contract to sell, grant any option to purchase or otherwise dispose of, directly or indirectly, in any offering registered with the Commission (i) any Securities or other securities substantially similar to the Securities other than as expressly contemplated by the New Indenture, if at all, or (ii) any other securities convertible into, or exercisable or exchangeable for, any of the Securities or other securities substantially similar to the Securities unless the Company, either on its own or upon the request of the Holders provides the Holders with an opinion of counsel (such counsel to have experience and sophistication in the matters addressed in such opinion) addressed to the Holders stating that any such offer, sale, contract, option or other disposition will not result in the Securities being required to be registered under the Securities Act.

(k) The Company will not identify any of the Indemnified Parties (as defined below) in a press release or any other public statement without the prior written consent of such Indemnified Party, unless such identification is required by law.

7. **Payment of Expenses**. In addition to the obligations agreed to by the Company under Section 2(b)(vii) herein, the Company agrees to pay all costs and expenses incident to the performance of the obligations of the Company under this Agreement, whether or not the transactions contemplated herein are consummated or this Agreement is terminated, including all costs and expenses incident to (i) the authorization, issuance, sale and delivery of the Securities and any taxes payable in connection therewith; (ii) the fees and expenses of counsel, accountants and any other experts or advisors retained by the Company; and (iv) the fees and all reasonable expenses of the New Indenture Trustee and any other trustee or paying agent appointed under the Operative Documents, including the fees and disbursements of counsel for such trustees as set forth in that certain Fee Agreement dated as of the date hereof between the Company and The Bank of New York Mellon Trust, National Association, executed in connection with this Agreement and the New Indenture.

8. **Indemnification**. (a) The Company agrees to indemnify and hold harmless the Holders, Taberna, Taberna Capital Management, LLC, Taberna Securities, LLC, and their respective affiliates (collectively, the "**Indemnified Parties**") and each person, if any, who controls any of the Indemnified Parties within the meaning of the Securities Act or the Exchange Act, and the Indemnified Parties' respective directors, officers, employees and agents against any and all losses, claims, damages or liabilities, joint or several, to which the Indemnified Parties may become subject, under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based on (i) the breach or alleged breach of any representation, warranty, or agreement of the Company contained in the Operative Documents, or (ii) the execution and delivery by the Company of the Operative Documents and the consummation of the transactions contemplated herein and therein, and agrees to reimburse each such Indemnified Party, as incurred, for any legal or other expenses reasonably incurred by the Indemnified Parties in connection with investigating or defending any such loss, claim, damage, liability or action except to the extent any such loss, claim, damage, liability or action is the direct result of any bad faith, fraudulent misrepresentation, willful misconduct or breach of the representations and warranties and agreements, by such Indemnified Party. This indemnity agreement will be in addition to any liability that the Company may otherwise have.

(b) Promptly after receipt by an Indemnified Party under this Section 8 of notice of the commencement of any action, such Indemnified Party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, promptly notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party will not relieve the indemnifying party from liability under paragraph (a) above unless and to the extent that such failure results in the forfeiture by the indemnifying party of material rights and defenses. The Indemnified Parties shall be entitled to appoint counsel to represent the Indemnified Parties in any action for which indemnification is sought. An indemnifying party may participate at its own expense in the defense of any such action; *provided*, that counsel to the indemnifying party shall not (except with the consent of the Indemnified Party) also be counsel to the Indemnified Party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, unless an Indemnified Party elects to engage separate counsel because such Indemnified Party believes that its interests are not aligned with the interests of another Indemnified Party or that a conflict of interest might result. An indemnifying party will not, without the prior written consent of the Indemnified Parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not the Indemnified Parties are actual or potential parties to such claim, action, suit or proceeding) unless such settlement, compromise or consent includes an unconditional release of each Indemnified Party from all liability arising out of such claim, action, suit or proceeding.

9. **Representations and Indemnities to Survive**. The respective agreements, representations, warranties, indemnities and other statements of the Company and/or its officers set forth in or made pursuant to this Agreement will remain in full force and effect and will survive the Exchange. The provisions of Sections 7 and 8 shall survive the termination or cancellation of this Agreement.

10. **Amendments**. This Agreement may not be modified, amended, altered or supplemented, except upon the execution and delivery of a written agreement by each of the parties hereto.

11. **Notices**. All communications hereunder will be in writing and effective only on receipt, and will be mailed, delivered by hand or courier or sent by facsimile and confirmed or by any other reasonable means of communication, including by electronic mail, to the relevant party at its address specified in Exhibit D.

12. **Successors and Assigns**. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person other than the parties hereto and the affiliates, directors, officers, employees, agents and controlling persons referred to in Section 8 hereof and their successors, assigns, heirs and legal representatives, any right or obligation hereunder. None of the rights or obligations of the Company under this Agreement may be assigned, whether by operation of law or otherwise, without Taberna's prior written consent.

13. **Applicable Law**. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW).

14. **Submission to Jurisdiction**. ANY LEGAL ACTION OR PROCEEDING BY OR AGAINST ANY PARTY HERETO OR WITH RESPECT TO OR ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT IN OR REMOVED TO THE COURTS OF THE STATE OF NEW YORK, IN AND FOR THE COUNTY OF NEW YORK, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK (IN EACH CASE SITTING IN THE BOROUGH OF MANHATTAN). BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

15. **Counterparts and Facsimile**. This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. This Agreement may be executed by any one or more of the parties hereto by facsimile.

16. **Entire Agreement**. This Agreement constitutes the entire agreement of the parties to this Agreement and supercedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Agreement has been entered into as of the date first written above.

NEWCASTLE INVESTMENT CORP.

By: /s/ Brian Sigman
Name: Brian Sigman
Title: Chief Financial Officer

(Signatures continue on the next page)

TABERNA, AS HOLDERS OF THE ORIGINAL PREFERRED SECURITIES AND AS HOLDERS (AS DEFINED IN THE NEW INDENTURE):

TABERNA PREFERRED FUNDING IV LTD.

By: /s/ Alasdair Foster
Name: Alasdair Foster
Title: Director

TABERNA PREFERRED FUNDING V, LTD.

By: /s/ Alasdair Foster
Name: Alasdair Foster
Title: Director

TABERNA PREFERRED FUNDING VI, LTD.

By: /s/ Alasdair Foster
Name: Alasdair Foster
Title: Director

TABERNA PREFERRED FUNDING VII, LTD.

By: /s/ Alasdair Foster
Name: Alasdair Foster
Title: Director

EXHIBIT A

Copy of Original Preferred Securities

EXHIBIT B-1

Copy of Note 1

EXHIBIT B-2

Copy of Note 2

EXHIBIT B-3

Copy of Note 3

EXHIBIT B-4

Copy of Note 4

EXHIBIT C

Notice Information

Taberna:

c/o Taberna Capital Management, LLC
450 Park Avenue, 11th Floor
New York, NY 10022
Attention: Mr. Raphael Licht
Facsimile: (212) 243-9039
e-mail: rlicht@raitft.com

Company:

Newcastle Investment Corp.
1345 Avenue of the Americas
New York, New York 10105
Attention: Mr. Jason Corn
Facsimile: (917) 591-8634
e-mail: jcorn@fortress.com

SCHEDULE 1

List of Significant Subsidiaries

Newcastle CDO VII, Limited
Newcastle CDO VIII 1, Limited
Newcastle CDO IX 1, Limited
Newcastle CDO X, Limited

Schedule 2

Limitations on Subsidiary Payments to the Company

1. Limitations on distributions on junior debt securities and equity interests issued by Newcastle CDO VII, Limited, and the payment of certain collateral administration fees to Newcastle Investment Corp. or its Affiliates, pursuant to the failure of such CDO to meet certain over-collateralization covenants.

ANNEX A

Pursuant to Section 3(b) of the Agreement, Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Company, shall deliver an opinion to the effect that:

1. NIC TP LLC is validly existing in good standing under the laws of the State of Delaware.

2. The Exchange Agreement, the Indenture and the Pledge Agreements are valid and binding agreements of the Company, enforceable against the Company in accordance with their terms.

3. The PSAACA is a valid and binding agreement of NIC TP LLC, enforceable against NIC TP LLC in accordance with its terms.

4. The execution and delivery by the Company of each of the Transaction Documents, and by NIC TP LLC of the PSAACA, and the consummation by the Company and NIC TP LLC of the transactions contemplated thereby, including the issuance and sale of the Notes by the Company, will not (i) constitute a violation of, or a breach or default under, the terms of any Applicable Contract, or (ii) violate or conflict with, or result in any contravention of, any Applicable Law. We do not express any opinion, however, as to whether the execution or delivery by the Company of each of the Transaction Documents, or by NIC TP LLC of the PSAACA, or the consummation by the Company or NIC TP LLC of the transactions contemplated thereby, will constitute a violation of, or a default under, any covenant, restriction or provision with respect to financial ratios or tests or any aspect of the financial condition or results of operations of the Company or any of its subsidiaries.

5. No Governmental Approval, which has not been obtained or taken and is not in full force and effect, is required to authorize, or is required for, the execution or delivery of each of the Transaction Documents by the Company or the PSAACA by NIC TP LLC or the consummation by the Company or NIC TP LLC of the transactions contemplated thereby.

6. When the Notes have been duly executed, authenticated, issued and delivered by the Company in exchange for the TRUPs in accordance with terms of the Exchange Agreement, the Notes will constitute valid and binding obligations of the Company, entitled to the benefits of the Indenture and enforceable against the Company in accordance with their terms.

7. Assuming (i) the accuracy of the representations and warranties of the Company set forth in Section 4 of the Exchange Agreement, (ii) the accuracy of the representations and warranties of Taberna set forth in Section 5 of the Exchange Agreement, and (iii) the due performance by the Company of the covenants and agreements set forth in Section 6 of the Exchange Agreement, the sale and delivery of the Notes to Taberna in the manner contemplated by the Exchange Agreement does not require registration under the Securities Act of 1933, as amended, or qualification of the Indenture under the Trust Indenture Act of 1939, as amended, it being understood that we do not express any opinion as to any subsequent reoffer, resale or other transfer of any Note.

8. To our knowledge, no action, suit or proceeding at law or in equity is pending or threatened to which the Company, NIC TP LLC or the Significant Subsidiaries (as defined in the Exchange Agreement) are or may be a party and, to our knowledge, no action, suit or proceeding is pending or threatened against or affecting the Company, NIC TP LLC or the Significant Subsidiaries or any of their properties or assets before or by any court or governmental official, commission, board or other administrative agency, authority or body, or any arbitrator, wherein an unfavorable decision, ruling or finding could reasonably be expected to have a material adverse effect on the consummation of the transactions contemplated by the Exchange Agreement, the Indenture and/or the Pledge Agreements, or the issuance and sale of the Notes as contemplated therein, or the condition, earnings, affairs, business or results of operations of the Company, NIC TP LLC and the Significant Subsidiaries on a consolidated basis (except as set forth on Schedule II hereto).

ANNEX B

Pursuant to Section 3(c) of the Agreement, Company Counsel shall deliver an opinion to the effect that for U.S. federal income tax purposes, the Securities will constitute indebtedness of the Company.

In rendering such opinion, such counsel may (A) state that its opinion is limited to the federal laws of the United States and (B) rely as to matters of fact, to the extent deemed proper, on certificates of responsible officers of the Company and public officials.

ANNEX C

Pursuant to Section 3(d) of the Agreement, Gardere Wynne Sewell LLP, special counsel for the Trustee, shall deliver an opinion to the effect that:

(i) The Bank of New York Mellon Trust Company, National Association (the "Bank") is a national banking association with trust powers, duly and validly existing under the laws of the United States of America, with corporate power and authority to execute, deliver and perform its obligations under the New Indenture and to authenticate and deliver the Securities, and is duly eligible and qualified to act as Trustee under the New Indenture pursuant to Section 6.1 thereof.

(ii) The New Indenture has been duly authorized, executed and delivered by the Bank and constitutes the valid and binding obligation of the Bank, enforceable against it in accordance with its terms except (A) as may be limited by bankruptcy, fraudulent conveyance, fraudulent transfer, insolvency, reorganization, liquidation, receivership, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, and by general equitable principles, regardless of whether considered in a proceeding in equity or at law and (B) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

(iii) Neither the execution or delivery by the Bank of the New Indenture, the authentication and delivery of the Securities pursuant to the terms of the New Indenture, nor the performance by the Bank of its obligations under the New Indenture (A) requires the consent or approval of, the giving of notice to or the registration or filing with, any governmental authority or agency under any existing law of the United States of America governing the banking or trust powers of the Bank or (B) violates or conflicts with the Articles of Association or By-laws of the Bank or any law or regulation of the State of New York or the United States of America governing the banking or trust powers of the Bank.

(iv) The Securities have been authenticated and delivered by a duly authorized officer of the Bank.

In rendering such opinion, such counsel may (A) state that its opinion is limited to the laws of the State of New York and the laws of the United States of America, (B) rely as to matters of fact, to the extent deemed proper, on certificates of responsible officers of the Bank, the Company and public officials, and (C) make customary assumptions and exceptions as to enforceability and other matters.